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No. 93-

In The

Supreme Court of the United States

October Term, 1993

THIRD NATIONAL BANK IN NASHVILLE,

Petitioner,

vs.

THE COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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I.

QUESTIONS PRESENTED FOR REVIEW

1. May the Louisiana Court of Appeal overrule this Court's decision in *Hanson v. Denckla*, 357 U.S. 255, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), by holding that a non-resident trustee of an insurance trust is subject to the personal jurisdiction of a state in which the trustee has no office, holds no assets, and has solicited no business?

2. Does a national bank have sufficient "minimum contacts" with a forum state when it acts as the custodian of an insurance policy outside the forum and it has no offices or employees in the forum, solicits and conducts no business in the forum, and holds no trust assets in the forum?

PARTIES TO THE PROCEEDINGS BELOW

The following is a list of parties to the proceeding in the Louisiana Supreme Court:

1. SunTrust Banks, Inc. (parent corporation of Third National Corporation).

2. Third National Corporation (holding company of Third National Bank in Nashville).

3. Third National Bank in Nashville ("Third National"), a national banking association.

4. Douglas Green, former Commissioner of Insurance for the State of Louisiana.

5. Group Programs, Inc. of Breaux Bridge, Louisiana.

6. National Union Fire Insurance Company of Pittsburgh, Pennsylvania.

7. Liberty Mutual Insurance Company.

8. Patrick Huval.

9. Dianne Flores.

10. Thomas K. Huval.

11. Dale F. Huval.

12. Kathryn Pontiff.

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STATEMENT OF REPORTS OF OPINIONS

The trial court's memorandum opinion granting Third National's motion to dismiss is not published. The opinion of the Louisiana Court of Appeal, First Circuit, reversing the trial court's decision, is reported at 622 So. 2d 275 (La. Ct. App. 1st Cir. 1993). The ruling of the Louisiana Supreme Court denying the application of Third National for a writ of certiorari has not been officially published. It is published unofficially at 1993 La. LEXIS 3508 (La. Dec. 10, 1993).

The Appendix contains the trial court's memorandum opinion, **A-11**, the decision of the Louisiana Court of Appeal, **A-3**, and the decision of the Louisiana Supreme Court. **A-1**.

STATEMENT OF JURISDICTION

By final order entered on December 10, 1993, the Louisiana Supreme Court denied Third National's application for a writ of certiorari to review the judgment of the Louisiana Court of Appeal which found that Third National had sufficient minimum contacts with Louisiana for courts in Louisiana to exercise personal jurisdiction over it.

The Louisiana Supreme Court is the state court of last resort in Louisiana. Third National invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS RELEVANT TO THIS PETITION

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

> A. A court may exercise personal jurisdiction over a non-resident, who acts directly or by an agent, as to a cause of action arising from any of the following activities performed by the non-resident:
>
> (1) Transacting any business in this state.
>
> (2) Contracting to supply services or things in this state.
>
> (3) Causing injury or damage by an offense or quasi offense committed through an act or omission in this state.
>
> (4) Causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives revenue from goods used or consumed or services rendered in this state.

> B. In addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a non-resident on any basis consistent with the constitution of [Louisiana] and the Constitution of the United States.

La. Code Civ. Proc. Ann. art. 13:3201 (West 1991).

> No financial institution or officer or employee thereof shall be deemed or implied to be acting as a fiduciary, or have a fiduciary obligation or responsibility to its customers or to third parties other than shareholders of the institution, unless there is a written agency or trust agreement under which the financial institution specifically agrees to act and perform in the capacity of a fiduciary. The fiduciary responsibility and liability of a financial institution or any officer or employee thereof shall be limited solely to performance under such a contract and shall not extend beyond the scope thereof.

La. Rev. Stat. Ann. § 6:124 (West 1991).

STATEMENT OF THE CASE

The Commissioner of Insurance for the State of Louisiana (the "Commissioner") filed a petition in Louisiana state court on December 28, 1990, in his capacity as liquidator of the Summit Insurance Plan Trust, a multi-employer health insurance plan ("Summit"). **A-23.**[1] The petition names as defendants Group Programs, Inc., a Louisiana corporation and administrator of Summit ("Group

[1] Citations refer the Court to the Appendix filed with this Petition.

Programs"); Third National, the "trustee" of Summit; insurers of Group Programs and Third National; and individual employees of Group Programs. The Petition claims that various actions and/or inactions of the defendants caused Summit's insolvency. The Commissioner seeks to recover more than $8 million, allegedly representing the amount of unpaid health and/or life insurance claims of employees and/or employer participants in Summit. *Id.*

Third National's connection with Summit began in 1985 when Gibbs Smith, an existing customer of Third National and a resident of Nashville, Tennessee, approached Third National about acting as a trustee under a multi-employer insurance trust. **A-79**. The sole purpose of the trust was to apply for and hold group master insurance policies. **A-47-48.**

Unbeknownst to Third National, Gibbs Smith was acting on behalf of Patrick Huval, a Louisiana resident and president of Group Programs. **A-79-80**. Patrick Huval had hired Gibbs Smith as a consultant and had travelled to Nashville in March 1985 to discuss with Mr. Smith the formation of such trusts. **A-79**. Mr. Smith supplied Patrick Huval with a form document styled "Insurance Trust Agreement," and submitted it to Third National for execution. *Id.*

The Insurance Trust Agreement (the "Trust Agreement") was executed in Nashville by Third National and Group Programs on March 8, 1985. **A-47**. The Trust Agreement established the Summit Insurance Plan Trust as a Tennessee trust, and specifically provided

that the trust was to be governed by Tennessee law. **A-53**. The Trust Agreement does not mention Louisiana. *See* **A-47-54**.

Third National had only two duties under the Trust Agreement. These duties were strictly custodial: Third National was required (1) to make application, at Group Programs' direction, for a group insurance policy or policies, and (2) to hold any such policy in Nashville, Tennessee. **A-47-48**. For these two minimal duties, Third National was paid $500 per year. **A-13**.

Group Programs was the "grantor" under the Trust Agreement. **A-47**. It delegated to itself all duties of administration of Summit, including all duties and responsibilities relating to the operation of the Trust. **A-49**. Group Programs was solely responsible for choosing the appropriate group insurance policy and insurance company which would provide coverage for Summit participants. Group Programs was assigned to perform all discretionary duties associated with Summit, to pay or collect premiums, and to make all decisions related to the group master insurance policies. *Id.* The Trust Agreement provides that "the Trustee shall have no duty to determine whether the Administrator is properly performing its duties hereunder." *Id.* It also states that Third National "shall have no direct or implied obligation to any Participating Employers." **A-52**.

From its commencement in 1985 until it was placed into rehabilitation in 1990, Summit operated in Louisiana and other states providing health insurance benefits to participating employers' employees. **A-11**. There is no

evidence that Third National understood when it executed the Trust Agreement that the insurance policy or policies it was to hold were to affect Louisiana residents. In fact, the Trust Agreement is governed by Tennessee law and requires that insurance policies obtained be from companies authorized to conduct insurance business in Tennessee. **A-53**; **A-48**. Further, Third National's initial correspondence related to Summit was directed to Gibbs Smith in Nashville. **A-77**.

The only group insurance policy ever obtained for use by Summit participants was one from Durham Life Insurance Company (the "Durham Policy"). **A-12**. The Durham Policy remained in effect from Summit's commencement in 1985 allegedly through June 1, 1988, when Durham purportedly terminated the Durham Policy. *Id.* Third National never received notice that Durham Life Insurance Company was attempting to terminate the Durham Policy. **A-63**.

After the purported termination of insurance coverage for Summit, Group Programs continued operating Summit as an uninsured or self-insured entity. **A-32**. After June 1, 1988, Group Programs received annual premiums in excess of $20 million, and paid from these premiums claims from Summit's participants and a commission to itself. **A-13**; **A-72-73**. Eventually, however, claims exceeded premiums, Summit lacked the ability to make payments to claimants, Summit became insolvent, and the Commissioner was appointed to liquidate Summit. **A-23**.

The Commissioner commenced this action in the Nineteenth Judicial District Court, Parish of East Baton

Rouge, Louisiana. *Id.* The Petition seeks to hold Third National and the other defendants liable for alleged breaches of contract, negligence, and breach of fiduciary duties. **A-33**.

The case was removed by Third National to the United States District Court for the Middle District of Louisiana. While pending in federal court, Third National filed a motion to dismiss the action against it on the basis that it was not subject to personal jurisdiction in Louisiana. **A-44**. The action was later remanded to state court,[2] which held a "contradictory evidentiary hearing"[3] on Third National's challenge to personal jurisdiction. **A-12**.

On January 31, 1992, the trial court granted Third National's motion and dismissed it from the action. **A-17**. The trial court held that Third National had insufficient minimum contacts with Louisiana to permit the court to exercise personal jurisdiction over it. **A-14**. The trial court

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[2] The basis for Third National's removal was that the Employee Retirement Income Security Act ("ERISA") granted to federal courts exclusive jurisdiction over the Commissioner's claims. The district court, however, found that the petition did not fall under ERISA's exclusive jurisdiction and remanded the case to state court.

[3] Louisiana procedure allows a trial court to hold either a "contradictory" or a "non-contradictory" evidentiary hearing on an exception to personal jurisdiction. *See de Reyes v. Marine Management and Consulting, Ltd.*, 586 So. 2d 103, 109 (La. 1991). At a non-contradictory hearing, the non-moving party must make only a prima facie case of minimum contacts. *Id.* At a contradictory evidentiary hearing, the moving party must prove facts in support of its position that jurisdiction is proper "by a preponderance of the evidence." *Id.*

never reached the question of whether subjecting Third National to personal jurisdiction in Louisiana would result in fair play and substantial justice. *Id.*

In its order sustaining Third National's challenge to personal jurisdiction, the trial court emphasized the absence of any acts by Third National to establish a general presence in Louisiana as well as the absence of any acts to "purposefully" establish contacts or relationships with Louisiana in connection with Summit. A-13.[4]

As the trial court noted, Third National is a national banking association with its principal place of business in Nashville, Tennessee. A-12. It has no branches, offices, or employees in Louisiana. *Id.* It does not transact any business in Louisiana, and does not contract to supply goods or services there. *Id.* Third National did not take any action purposefully directed toward Louisiana in connection with the Summit Trust. A-14.

The trial court concluded that Third National's connection to Summit was not the result of any action by Third National purposefully directed toward Louisiana. The trial court noted that Third National had not solicited the Summit business from Group Programs, nor did Patrick Huval, Group Program's president, ever meet with anyone from Third National. *Id.* The court also found that all instruments relating to Third National's connection with Summit were executed in Tennessee. A-13. The trial court further emphasized that under the

[4] None of the factual findings of the trial court were disturbed by the Louisiana Court of Appeal. A-7.

Trust Agreement, Third National's custodial duties under the Trust Agreement were minimal, and that its compensation, $500 per year, was commensurate with its assumption of minimal duties. *Id.* The trial court also emphasized that Third National had no knowledge, control or ownership of any funds located in Louisiana relating to the operation of Summit. *Id.*

The Commissioner appealed the trial court's final order to the Louisiana Court of Appeal. On July 2, 1993, the Louisiana Court of Appeal entered a judgment reversing the trial court's dismissal of Third National. A-3. In a brief opinion, the Court of Appeal held that Third National had established sufficient minimum contacts with Louisiana to permit Louisiana courts to exercise jurisdiction over it. A-6. The court held that minimum contacts were present simply because Third National was "the paid trustee of an insurance trust operating[5] at one time solely in this state, which trust was formed only as a result of the compensated actions of [Third National] entering into the [Trust Agreement]." *Id.*; 622 So. 2d 275, 277 (La. Ct. App. 1st Cir. 1993). Although the trial court never reached the question of whether it is fair to subject Third National to personal jurisdiction in Louisiana, the Court of Appeal apparently made this determination as well. A-6.

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[5] The Court's use of "operating" underscores its misperception of Third National's limited, passive duties. Group Programs was *administrator* of the Trust, not Third National, which was merely to hold an insurance policy in safekeeping.

On August 19, 1993, the Court of Appeal denied Third National's application for rehearing of its ruling. A-8. Third National timely filed a petition to the Louisiana Supreme Court for supervisory writs to the Court of Appeal on September 20, 1993. The Louisiana Supreme Court denied the petition on December 10, 1993. A-1.

Third National seeks this Court's review by certiorari pursuant to 28 U.S.C. § 1257.

REASONS FOR GRANTING THE WRIT AND ARGUMENT

A writ of certiorari should be granted because the Louisiana Court of Appeal has:

1. Decided a federal constitutional question in complete conflict with the decision of this Court in *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958);

2. Decided a federal constitutional question in a manner that departs from the analysis required by this Court in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985), and other cases; and

3. Decided a federal constitutional question in a way that adversely affects interstate commerce.

I.

The Decision of the Louisiana Court of Appeal Directly Conflicts with This Court's Decision in *Hanson v. Denckla*, 357 U.S. 235 (1958).

The Louisiana Court of Appeal held that Third National was subject to personal jurisdiction in Louisiana solely because it acted as a "trustee" of a trust that "operated" in Louisiana. This holding flatly conflicts with the holding of this Court in *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958). For this reason alone, Third National's petition should be granted.

Hanson, like the instant case, involved an attempt by a state to exercise personal jurisdiction over a non-resident trustee. In *Hanson*, the settlor had executed trust instruments in Delaware naming Delaware companies as trustees. The settlor moved to Florida, where she later died. A dispute arose over whether certain of her property should pass under a residuary clause in her will or pursuant to the Delaware trusts. The legatees of the will filed suit in Florida seeking a declaratory judgment as to what property passed under the will. The Delaware trustees were named as defendants. The Florida court eventually held that the Florida courts had personal jurisdiction over the Delaware trustees, and that the property passed under the residuary clause of the will.

After the Florida litigation was initiated but before judgment, the executrix filed a declaratory action in Delaware to determine who was entitled to the trust assets in that state. Following entry of the Florida decree, the executrix argued that it was res judicata of the Delaware dispute. The Delaware court rejected this

argument, holding that the Florida decree was not binding because the Florida court had no jurisdiction over the Delaware trustees. The Delaware court also determined that the property had passed under the trusts.

At issue before this Court was whether the Florida court erred in holding that it had jurisdiction over the Delaware trustees, and whether Delaware erred in refusing full faith and credit to the Florida decree.

In its opinion, this Court traced the evolution of the rules of personal jurisdiction from the "rigid rule" of *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1877), to the "flexible standard" of *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945). This Court emphasized that despite the relaxation of the rigid *Pennoyer* standard, constitutional limits still existed on a state's exercise of personal jurisdiction. *Hanson*, 357 U.S. at 250-51, 78 S. Ct. at 1238. This Court noted that although technological progress had increased the flow of commerce among the states, "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Id.* at 251, 78 S. Ct. at 1238 (citing *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 418, 77 S. Ct. 1360, 1362, 1 L. Ed. 2d 1456 (1957)).

This Court also rejected a "center of gravity" theory of personal jurisdiction. According to this Court, questions of personal jurisdiction do not turn upon whether the forum is the "center of gravity" of the controversy or the most convenient forum. Rather, the issue is personal jurisdiction, not choice of law, and is

determined by considering the acts of the non-resident who is haled into court in a distant forum. 357 U.S. at 254, 78 S. Ct. at 1240.

This Court held that the Delaware trustees were not subject to in personam jurisdiction in Florida. It stated:

> The defendant trust company has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record discloses no solicitation of business in that State either in person or by mail. . . . The cause of action is not one that arises out of an act done or transaction consummated in the forum State.

Id. at 251, 78 S. Ct. at 1238.

The conflict between this Court's opinion in *Hanson* and the decision of the Louisiana Court of Appeal is readily apparent. Like the trustee in *Hanson*, Third National has no offices and transacts no business in Louisiana. It never solicited business in Louisiana either by person or by mail, and the Commissioner's cause of action does not arise out of any act done or transaction consummated by Third National in Louisiana. In addition, no trust assets were ever present in Louisiana.[6]

Moreover, in finding personal jurisdiction over Third National, the Louisiana Court of Appeal relied upon factors that this Court expressly found to be insufficient in *Hanson*. In its decision, the Louisiana Court of Appeal

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[6] The Commissioner's argument to the contrary is discussed *infra* at 15-16 and n. 7.

identified the following factors to support jurisdiction over Third National:

> In this case, we find a bank which acted, from 1985 through 1990, as the paid trustee of an insurance trust operating at one time solely in this state, which trust was formed only as a result of the compensated actions of the non-resident bank in entering into the Insurance Trust Agreement. We find that these facts constitute sufficient minimum contacts by the Bank with Louisiana to satisfy the due process requirements of the Louisiana and United States constitutions, such that it is fair to require the Bank to appear in Louisiana's courts. *See Thompson [v. Great Midwest Fur Company]*, 395 So. 2d [840] at 842 [La. App. 1st Cir. 1981].

A-6. In other words, the Louisiana Court of Appeal held that an out-of-state bank that agrees to hold, as a "compensated trustee," a group insurance policy that ultimately affects Louisiana residents is subject to personal jurisdiction in Louisiana. Even though this Court's holding in *Hanson v. Denckla* was the cornerstone of Third National's argument, the Louisiana Court of Appeal never cited or addressed the *Hanson* decision in its short opinion.

The Court of Appeal's holding flatly conflicts with *Hanson* because the same factors were held to be insufficient there. As in this case, the trustee in *Hanson* was compensated, the Florida litigants claimed that the trust affected them, and the trust was formed when the bank entered into a trust agreement. According to this Court, these factors were insufficient to support an exercise of personal jurisdiction over the trustee in

Hanson. They are likewise insufficient to support an exercise of jurisdiction over Third National.

No legally significant distinctions exist between this case and *Hanson*. In the courts below, the Commissioner sought to distinguish this case from *Hanson* by arguing that here, unlike *Hanson*, trust assets were in fact located in the forum. The Commissioner argued that these assets consisted of operating bank accounts maintained in Louisiana in the name of Summit, and excess insurance policies obtained after the Durham Policy allegedly terminated in 1988.

However, these facts, even if established, fail to show purposeful activity by Third National directed toward Louisiana.[7] The undisputed facts establish that Third National had no ownership interest in or control over either the bank accounts established by Group Programs or the excess insurance policies that Group Programs obtained. **A-13**. As the Trust Agreement makes clear,

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[7] Moreover, under the law of Louisiana and Tennessee, the bank accounts and excess insurance policies never became assets of the trust. In both states, where legal title to assets does not repose in the trustee, such assets are not assets of the trust. *See St. Charles Land Trust v. St. Amant*, 253 La. 243, 217 So. 2d 385 (1968); *Sternberger v. Glenn*, 175 Tenn. 644, 137 S.W.2d 269 (1940). Because Third National was not the signatory to the operating checking accounts in Louisiana, was not named as the owner of the excess policies, and in fact was unaware of the existence of either of these assets, it did not own the assets, and the assets could not have become property of the Trust. Further, because the Trust Agreement does not identify any asset other than insurance policies, no breach of fiduciary duty action may be premised on these allegations. La. Rev. Stat. Ann. § 6:124 (West 1991).

Third National had no duties related to the administration of Summit. **A-49**. Further, Third National had no knowledge of the existence of these bank accounts or insurance policies. **A-62**. Accordingly, the location of these assets is irrelevant in determining the personal jurisdiction question.

The Court of Appeal's opinion that Third National is subject to personal jurisdiction in Louisiana mimics the mechanical analysis urged by the Commissioner. The Court of Appeal elevates form over substance and ignores the standard pursuant to which Louisiana's exercise of personal jurisdiction over Third National must be judged: whether Third National "purposefully availed itself of the privilege of conducting activities within [Louisiana], thus invoking the benefit and protection of its laws." *Hanson*, 357 U.S. at 253, 78 S. Ct. at 1239-40. Because Third National was not involved in establishing the bank accounts or procuring the excess policies, to ask whether these assets were physically present in Louisiana obscures the controlling question. The physical location of these alleged "assets" in Louisiana fails to show any activity by Third National purposefully directed toward Louisiana.

The decision of the Louisiana Court of Appeal directly conflicts with this Court's opinion in *Hanson*. Third National's petition should be granted to resolve this conflict.

II.

The Erroneous Decision of the Louisiana Court of Appeal Resulted from the Court's Departure from the Analysis Required by This Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and Its Progeny.

The Louisiana Court of Appeal reached an erroneous result because of its radical departure from the personal jurisdiction analysis directed by this Court in *International Shoe* and its progeny. The decision of the Louisiana Court of Appeal stemmed from its apparent belief that a contract (the Trust Agreement) between Third National and a resident of the forum, coupled with Third National's label or title of "trustee," were sufficient factors upon which to confer jurisdiction. This belief resulted in the court's failure to address whether Third National in fact purposefully directed activities toward Louisiana.

This Court has repeatedly rejected such "mechanical" tests for determining personal jurisdiction. *See, e.g., Burger King v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) ("The Court long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests"). This Court has also repeatedly rejected the notion that a non-resident's contractual relationship with a resident of the forum, standing alone, provides a sufficient basis for the exercise of personal jurisdiction. *Id.*

In *Burger King v. Rudzewicz*, this Court upheld Florida's exercise of personal jurisdiction over a non-resident franchisee, but did so only after it reviewed the long history of prior negotiations between the parties,

consequences anticipated as a result of the parties' contract, and the actual terms of the contract. *Id.* This Court made it clear that the existence of a contract with a resident of the forum and the non-resident's status as a "franchisee" of a company located within the forum were insufficient contacts to support personal jurisdiction. This Court noted:

> If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co. v. Washington*, supra, 326 U.S., at 319, 66 S.Ct. at 159, or on "conceptualistic . . . theories of the place of contracting or of performance," *Hoopeston Canning Co. v. Cullen*, 318 U.S., at 316, 63 S. Ct., at 604. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.*, at 316-317, 63 S. Ct., at 604-605. *It is these factors – prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing – that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.*

Id. at 479, 105 S. Ct. at 2185 (emphasis supplied).

This Court has followed this approach consistently. Even when this Court has found sufficient minimum contacts to support an exercise of personal jurisdiction

over a non-resident defendant, this finding has been made only after a thorough examination of the substance of the non-resident's contacts with and/or relationship to the forum.

For example, in *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957), this Court held that a non-resident insurer was subject to jurisdiction in California. This decision was not premised upon the simple fact that the insurance company was an "insurer," or that it had entered into a contract with a resident of the forum. Rather, this Court found determinative that the insurance company had solicited the petitioner's decedent's business in California, the insurance contract was "delivered" in California, and the premiums were mailed from California. 355 U.S. at 221-22, 223, 78 S. Ct. at 200, 201.

Derailed by its own label-oriented approach, the Louisiana Court of Appeal did not attempt any such analysis. Rather, the court simply held that trustees of trusts which "operate" in a forum state are subject to personal jurisdiction in the state where beneficiaries of the assets of the trust (such as an insurance policy) are located.[8] Although this rule is easily applied, it is incompatible with this Court's prior decisions.

Not only does the Louisiana Court of Appeal's result deprive Third National of an important constitutional

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[8] The Louisiana Court of Appeal also glossed over an important distinction between the *trust*, which existed as a result of the Trust Agreement, and the health insurance *plan*, which Group Programs unilaterally operated as an uninsured entity.

right, but its label-oriented analysis assures that its error will be repeated. Its decision is reported, giving it additional precedential value. The Court should grant review to correct Louisiana's erroneous oversight of the precedents of this Court.

III.

Under the Standard Set Forth by This Court in *International Shoe* and Its Progeny, Third National Does Not Have Sufficient "Minimum Contacts" with Louisiana To Be Subject to Personal Jurisdiction There.

Had the Louisiana Court of Appeal taken the approach mandated by earlier decisions of this Court in *Hanson* and *Burger King*, it would have affirmed the trial court's dismissal of Third National because of the paucity of jurisdictionally relevant contacts between Third National and Louisiana. This conclusion follows from a brief examination of the four factors enumerated by this Court in *Burger King*, 471 U.S. at 479, 105 S. Ct. at 2185.

First, the negotiations leading up to the execution of the Trust Agreement in 1985 took place in Nashville, Tennessee. Third National did not solicit the business and never met with Patrick Huval, a Louisiana resident who formed Summit. In fact, Third National was not even aware that the trust would operate in the state of Louisiana.

Second, Third National clearly could not and did not plan or anticipate any future involvement in Louisiana since it was unaware of Summit's connection with Louisiana.

Third, there is nothing in the contract itself that should have led Third National to anticipate being haled into court in Louisiana. The contract provides that it is to

be governed by *Tennessee* law. **A-53**. Aside from applying for an insurance policy at Group Program's direction, the only duty assumed by Third National under the contract was to hold an insurance policy, nothing more. **A-48**. The only policy obtained pursuant to the Trust Agreement was "delivered in and is governed by the laws of Tennessee."[9] **A-57**. In fact, the Trust Agreement required that Third National obtain the insurance policy or policies from "an insurance company or companies duly authorized to conduct the business of insurance *in the State of Tennessee* and other states in which Participating Employers are located." **A-48**. The Trust Agreement does not mention Louisiana.

Finally, Third National's course of performance under the contract also reveals a lack of any activity by Third National "purposefully directed" toward Louisiana. Third National did receive a nominal annual fee of $500 apparently drawn on the administrator's controlled accounts in Louisiana. However, the mere fact that it was paid from an account in Louisiana is an insufficient basis to find personal jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868, 1873, 80 L. Ed. 2d 404 (1984). Third National's

---

[9] The Commissioner has argued that although the contract limited Third National's duties, Louisiana law nevertheless imposed other "implied" or "inherent" duties, and that these duties subject Third National to jurisdiction there. The Louisiana court did not address this argument. Although it appears that Tennessee law governs the Trust Agreement, any argument that Louisiana law imposes implied duties on Third National, is clearly erroneous pursuant to La. Rev. Stat. Ann. § 6:124 (West 1991).

limited duties were all performed in Nashville, Tennessee.

To ignore the analysis required by this Court, or to attribute tacitly actions by Group Programs to Third National in order to satisfy standards of *Hanson* and *Burger King* is impermissible. As administrator of Summit, Group Programs performed substantial activities in Louisiana. These activities, however, are irrelevant in determining whether Third National took action in Louisiana sufficient to subject it to personal jurisdiction there. As this Court noted in *Hanson v. Denckla*:

> The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of its laws.

357 U.S. at 253, 78 S. Ct. at 1239-40. *Accord World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S. Ct. 559, 564, 62 L. Ed. 2d 490 (1980). *See also Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102, 109, 107 S. Ct. 1026, 1030, 94 L. Ed. 2d 92 (1987) ("Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State.") (emphasis in original). Recognizing these prior decisions from this Court, the trial court correctly concluded that "the proper focus is on actions taken by Third National Bank, not the

activities of the Trust, Group Programs, Inc. or Mr. Huval." A-14. In this case, the trial court found there were no such actions.

The issue is thus narrowly drawn: does a national bank acting merely as custodian of a purportedly terminated group insurance policy outside the forum state have sufficient minimum contacts with the forum to subject the bank to personal jurisdiction there? The faulty analysis of the Louisiana Court of Appeal, and that Court's affirmative answer to the question, are inconsistent with this Court's prior precedents and should be reviewed.

IV.

This Court Should Grant Review Because the Issue Is Important and Its Determination Will Substantially Affect Interstate Commerce.

This Court has always regarded as serious any state's attempt to exercise jurisdiction over non-residents, non-citizens, and others who have not purposefully established meaningful state contacts. The importance of the question raised by this application is manifest throughout the opinions of this Court cited in this Petition.

The questions raised in this Petition also have important implications for interstate commerce. If allowed to stand, the decision of the Louisiana Court of Appeal would effectively make every non-resident entity that contracts with a Louisiana resident subject to that state's jurisdiction. Thousands of commercial contracts are made with the state of Louisiana on a daily basis that

affect, directly or indirectly, a resident of Louisiana. This Court has repeatedly held that such effects, however, are insufficient in and of themselves to support personal jurisdiction. *See, e.g., Burger King*, 471 U.S. at 478-79, 105 S. Ct. at 2185.

In addition, the decision of the Louisiana Court of Appeal, if allowed to stand, will have a chilling effect upon interstate commerce. The decision tells non-residents that if they contract with a Louisiana resident, not knowing that the party is a Louisiana resident, the contract is all that is necessary to subject the non-resident to personal jurisdiction in Louisiana. It also tells them that attempts to limit their duties and responsibilities commensurate with the compensation they receive will be ineffective because a label or title such as insurer, franchisee or trustee is a sufficient basis to find personal jurisdiction over a non-resident. In Louisiana, the protections of the Fourteenth Amendment, as interpreted by the decisions of this Court, have been supplanted by a rule that is more easily applied. Constitutional safeguards have given way to judicial expediency. The result is predictable: fewer non-residents will contract with Louisiana residents, and interstate commerce will suffer.

CONCLUSION

Third National recognizes and appreciates Louisiana's interest in providing an avenue of redress for citizens who purchased insurance and whose claims remain unpaid. However, the Constitution continues to provide limits on the exercise of personal jurisdiction over non-residents. These limitations were not recognized

by the Louisiana Court of Appeal. This Court should grant this Petition to review its decision.

Respectfully submitted,

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The Supreme Court of the State of Louisiana

DOUGLAS D. GREEN,
COMMISSIONER OF INSURANCE
FOR THE STATE OF LOUISIANA

VS. NO. 93-C -2463

GROUP PROGRAMS, INC.,
NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA., THIRD
NATIONAL BANK, LIBERTY
MUTUAL INSURANCE
COMPANY, PATRICK HUVAL,
DIASNNE [sic] V. FLORES,
THOMAS HUVAL, DALE F.
HUVAL, KATHRYN H. PONTIFF

IN RE: Third National Bank; – Defendant(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number CA92 1625; Parish of East Baton Rouge Nineteenth Judicial District Court Div. "L" Number 364,878

December 10, 1993

Denied.

PH

PFC

JLD

JCW

HTL

CDK

ROO

MARCUS, J., not on panel.

Supreme Court of Louisiana
December 10, 1993

/s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 92 CA 1625

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE V. FLORES, THOMAS HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, NUMBER 364,878, IN AND FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA, HONORABLE MICHAEL PONDER, JUDGE PRESIDING.

BEFORE: LOTTINGER, C.J., FOIL, AND FOGG, JJ.
FILED: July 2, 1993

LOTTINGER, CHIEF JUDGE.

This appeal is brought by the Insurance Commissioner for the State of Louisiana from a judgment dismissing a Tennessee bank from an insurance liquidation proceeding on grounds that the bank does not have sufficient minimum contacts with Louisiana to render the bank subject to the personal jurisdiction of Louisiana's courts.

FACTS

In 1984, a Louisiana resident, Patrick Huval, approached a Tennessee insurance broker, Gibbs Smith, for information about setting up a multiple employer insurance trust in Louisiana. Smith had previously set up such a trust with Third National Bank in Nashville (the Bank) as trustee, and approached the Bank to act as trustee for Huval's trust, the Summitt Insurance Plan Trust (the Trust). The Bank has no offices or employees in Louisiana, and otherwise conducts no business in this state.

Huval had his Louisiana insurance company, Group Programs, Inc., act as the administrator for the Trust, leaving the Bank with few duties other than to hold a group master insurance policy from which Group Programs' Louisiana customers would obtain coverage for health and other insurances. The Bank properly obtained such a policy from Durham Life Insurance Company (Durham), through Smith's efforts. The Trust was confected in 1985 by means of an Insurance Trust Agreement between the Bank and Group Programs, and a Master Administrative Agreement between Group Programs and Durham. Group Programs operated the Trust from its offices in Breaux Bridge, Louisiana.

In 1988, Durham allowed the policy to expire and declined to renew it. No other policy of insurance was obtained to replace the lapsed Durham policy. The Trust was now uninsured, and although the 1985 Insurance Trust Agreement provided that the Trust would immediately terminate if coverage lapsed unless new coverages could be obtained without gaps, Huval continued to

operate Group Programs and the Trust. Huval reengineered the Trust by entering into a second Master Administrative Agreement between Group Programs and the Trust, now standing in the place of Durham as its own insurer, in June of 1988. Marjorie Kirkpatrick, the Bank's employee, signed this agreement on behalf of the Trust.

In 1990, the scheme unraveled when the Trust was placed in liquidation by petition of the Insurance Commissioner. In its attempt to marshal the assets of the Trust, the Insurance Commissioner named the Bank as a defendant for breaching fiduciary duties owed under the trust agreement to trust beneficiaries: the Louisiana residents who were employees of the companies subscribing for insurance coverage under the trust plan.

The Bank resisted the suit on grounds that it is not subject to the personal jurisdiction of Louisiana courts under the long-arm statute, La. R.S. 13:3201. It succeeded by asserting via the declinatory exception raising the objection of lack of personal jurisdiction that it lacks sufficient minimum contacts with the state to satisfy the due process requirements of the Louisiana and United States constitutions.

ASSIGNMENT OF ERROR

In its appeal the Insurance Commissioner contends that the district court erred in dismissing the Bank for lack of personal jurisdiction and erred in finding that the Bank had not established minimum contacts with the State of Louisiana so as to subject it to Louisiana's long arm jurisdiction. La.R.S. 13:3201 *et seq.*

DISCUSSION

The Louisiana long-arm statute provides several bases for the assertion of jurisdiction over nonresidents, the broadest of which turns upon a finding of minimum contacts and fundamental fairness, the more specific enumerations being sufficient in and of themselves for the assertion of jurisdiction. *See* La.R.S. 13:3201, and the Comments thereunder. *See also Thompson v. Great Midwest Fur Company*, 395 So.2d 840, 842-843 (La. App. 1st Cir. 1981). The purpose of the long-arm statute is to extend personal jurisdiction of Louisiana courts over nonresidents to the full limits of due process, i.e., to any nonresident who has had minimal contacts in the state. *Thompson v. Great Midwest Fur Company*, 395 So.2d at 843. The section must be liberally interpreted in favor of finding jurisdiction. *Id.*

In this case, we find a bank which acted, from 1985 through 1990, as the paid trustee of an insurance trust operating at one time solely in this state, which trust was formed only as a result of the compensated actions of the nonresident bank in entering into the Insurance Trust Agreement. We find that these facts constitute sufficient minimum contacts by the Bank with Louisiana to satisfy the due process requirements of the Louisiana and United States constitutions, such that it is fair to require the Bank to appear in Louisiana's courts. *See Thompson*, 395 So.2d at 842.

The Bank knew at the inception of the trust that Huval and Group Programs were setting up business in Louisiana. The Bank further knew that it was receiving its trustee's fee as a result of the business activities of Huval

and Group Programs in Louisiana. The relative amount of this fee to the premiums paid by the subscribers is irrelevant.

Therefore, we reverse the trial court's erroneous findings that the bank did not have sufficient minimum contacts with the state to justify the extension of long-arm jurisdiction over it.

CONCLUSION

Therefore, for the above and foregoing reasons the judgment of the trial court is REVERSED and this case is REMANDED for further proceedings. REVERSED AND REMANDED.

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 92/CA/1625

DOUGLAS D. GREEN,
COMMISSIONER OF INSURANCE,
STATE OF LOUISIANA

Parish of East Baton Rouge

--VERSUS--

GROUP PROGRAMS, INC., ET AL

On Application for Rehearing,

Rehearing DENIED

/s/ Morris A. Lottinger, Jr.
Morris A. LOTTINGER, JR.

/s/ Frank Foil
FRANK FOIL

/s/ Kenneth J. Fogg
KENNETH J. FOGG

Filed AUG 19 1993

/s/ Stanley P. Lemoine
STANLEY P. LEMOINE, Clerk

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

Post Office Box 4408

Baton Rouge, Louisiana 70821-4408

Docket Number: 92/CA/1625 DATE: AUG 19 1993

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE, STATE OF LOUISIANA

VERSUS

GROUP PROGRAMS, INC., ET AL

CERTIFICATE OF MAILING

I hereby certify that a copy of the attached was mailed to all counsel of record, and all parties not represented by counsel this date as listed below.

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STANLEY P. LEMOINE,
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FIRST CIRCUIT

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DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
GROUP PROGRAMS INC., ET AL	STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

(Filed Sept. 11, 1992)

This matter came on for hearing on January 31, 1992, on exception of lack of personal jurisdiction filed by defendant Third National Bank. Oral argument was held and the Court sustained the exception.

Plaintiff filed an application for new trial which was granted. At the hearing on May 22, 1992, the original judgment sustaining the exception was vacated in so far as the judgment dismissed the claims of plaintiff against Third National Bank with prejudice without reserving plaintiff's rights against the Bank in an appropriate forum. However, the exception of lack of jurisdiction was again sustained.

To briefly summarize the background of this litigation, the Commissioner of Insurance, as liquidator of Summit Insurance Plan Trust (hereinafter referred to as the Trust), filed suit against a number of defendants for operating the Trust while it was not insured. Plaintiff alleges that in March of 1985, defendant Patrick Huval incorporated defendant Group Programs, Inc., to administer a trust to provide health care insurance to employees of small businesses. That corporation then entered into an

"Insurance Trust Agreement" with exceptor Third National Bank of Tennessee and established the Trust. Third National Bank obtained a group insurance policy for members of the Trust from defendant Durham Life Insurance Company (hereinafter "Durham"). On April 1, 1985, Durham and Group Programs entered into a "Master Administrative Agreement." In May of 1988, Durham allegedly terminated the agreement and notified Group programs and Mr. Huval that it would no longer provide insurance for the Trust. Plaintiff contends that the Trust continued to operate without insurance. Third National Bank resigned as trustee on February 21, 1992.

At the original hearing on the exception, the parties stipulated to the use of affidavits in lieu of live witnesses. The affidavits and exhibits submitted in this matter reveal the following facts relating to the contacts Third National Bank has or may have had with the state of Louisiana.

Third National Bank has its place of business in Tennessee; no branch offices are located in this state. The Bank does not regularly transact business in Louisiana, nor does it contract to supply goods [or] services here.

The Trust was established through the initiative of a Louisiana citizen, Patrick Huval, who contacted Gibbs Smith, a resident of Tennessee. Mr. Smith had previously set up the type of multi-employer insurance trust Huval was interested in creating.

Third National Bank had been the trustee on the previous trust established by Mr. Smith and apparently, for that reason alone was contacted by Smith about performing the same function for Huval's trust. Mr. Smith testified that Third National Bank did not solicit the

business. Mr. Huval testified that Mr. Smith had to contact the bank regarding the trust agreement and that he, Huval, never met with anyone from the Bank. All instruments relating to Third National Bank were executed in Tennessee.

Pursuant to the trust agreement, Third National Bank had the duties of obtaining and holding a master policy, which it secured form Durham, a North Carolina company. The Bank had no administrative or collection duties. In return for performing its duties, Third National Bank received $500.00 a year. The Court considers this to be a minimal amount of compensation in light of the alleged millions of dollars in premiums being received by Group Programs.

Third National Bank had no control, knowledge, or ownership privileges in any trust funds held in Louisiana banks.

The Bank was not notified of Durham's termination of the master policy.

Pursuant to La. R.S. 13:3201 B, a Louisiana court may exercise personal jurisdiction over a nonresident on any basis consistent with the Louisiana and U.S. Constitutions. Under a constitutional analysis, the first inquiry is whether the nonresident has purposefully established contacts or relationships with the forum state. If so, the quality and nature of the contacts and the relationship among the nonresident, the forum, and the litigation must be examined in order to determine whether it

would be reasonable for the forum to exercise jurisdiction.[1]

The foregoing facts do not establish the existence of any contacts with this state resulting from the purposeful conduct of Third National Bank. The proper focus is on actions taken by Third National Bank, not the activities of the Trust, Group Programs, Inc., or Mr. Huval. There is no showing that the Bank had any administrative duties to perform in this state. The Bank had no control over any trust assets in this state, nor did it participate in the solicitation of business in this state for the Trust or otherwise. The evidence before the Court indicates that the Bank was selected to serve a nominal role in the Trust; this selection was made solely because the Bank had served in the same capacity for another trust established by Mr. Smith in Tennessee. For this service, the Bank received minimal compensation.

Since the threshold requirement of minimum contacts has not been established, it is not necessary for the Court to address whether the exercise of its jurisdiction over the Bank would result in fair play and substantial justice.

The plaintiff failed to raise any additional substantive arguments at the new trial on the exception. The case of *Brown v. Flowers Industries*[2] was cited by plaintiff for the proposition that a single phone call to the forum state establishes minimum contacts with that state. However, the Court finds the *Brown* case is distinguishable in that

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[1] *Superior Supply v. Assoc. Pipe and Supply*, 515 So.2d 790, 796 (La. 1987).

[2] 688 F.2nd 328 (5th Cir. 1982).

the phone call found to constitute "minimum contacts" was alleged to be the intentional tort on which the suit was based.

Three recent cases were cited by the plaintiff; all of which the Court finds distinguishable from the instant factual situation. In each case, the trial court's finding of lack of personal jurisdiction was reversed on appeal. *E & L Lumber v. Ashy Corp,*[3] involved a nonresident corporation that had initiated contact with a forum business and continued the relationship by ordering over the phone numerous times for several years. In *Maltezos v. F.W. Woolworth*[4], the nonresident defendant admitted it conducted business in Louisiana but argued that it would be unduly burdensome to litigate in this state. In *Babcock & Wilcox Company v. Babcock Mexico, S.A. de C.V.*[5], the Fourth Circuit emphasized that the nonresident had met in Louisiana concerning the transaction at issue and had made numerous phone calls and mailings to this date in connection with the transaction.

Accordingly, the exception of lack of personal jurisdiction is sustained and plaintiff's claims against Third National Bank are dismissed, reserving plaintiff's rights against the Bank in an appropriate forum.

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[3] 594 So.2nd 948 (3rd Cir. 1992).

[4] No. 91-CA-1581, Court of Appeal, Fourth Circuit (April 1, 1992). This opinion had not been released for publication.

[5] No. 91-CA-1694, Court of Appeal, Fourth Circuit (April 1, 1992). This opinion had not been released for publication.

Baton Rouge, Louisiana, this 11th day of September, 1992.

/s/ Michael E. Ponder
Michael E. Ponder, Judge

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
CIVIL DIVISION "D"

DOUGLAS D. GREEN, COMMISSIONER
OF INSURANCE FOR THE STATE OF
LOUISIANA
VERSUS NUMBER 364,878
GROUP PROGRAMS, INC., ET AL

TRANSCRIPT OF HEARING
EXCEPTION OF LACK OF PERSONAL JURISDICTION
FRIDAY, JANUARY 31, 1992
THE HONORABLE MICHAEL E. PONDER
JUDGE PRESIDING

APPEARANCES:

RONNIE SHARKEY, ESQUIRE FOR PLAINTIFF
J.E. MCELLIOGOTT, JR., ESQUIRE;
MICHAEL JUNEAU, ESQUIRE;
GERALDINE FONTENOT, ESQUIRE;
TOM KANADAY, ESQUIRE; AND
JULIE SCHWARTZ; ESQUIRE FOR DEFENDANTS

REPORTED BY:
MARIE L. LUTHER
OFFICIAL COURT REPORTER

FILED: MAY 8, 1992
/s/ Marie L. Luther
DEPUTY CLERK
OF COURT

A TRUE COPY
/s/ Marie L. Luther
DY. CLERK OF COURT

ORAL REASONS FOR JUDGMENT

BY THE COURT:

THE THRUST OF THE PLAINTIFF'S ARGUMENT IN FAVOR OF THE JURISDICTION OF THIS COURT, THE PERSONAL JURISDICTION OVER THIRD NATIONAL BANK, WAS THE INTEGRAL INVOLVEMENT THAT THEY HAVE INSOFAR AS OPERATION OF SUMMIT INSURANCE TRUST PLAN HERE IN THIS STATE.

PLAINTIFF'S ARGUMENTS REVOLVE AROUND THE ALLEGED ACTIVITIES OF GROUP PROGRAMS AND MR. HUVAL IN THIS STATE. HOWEVER, THE PROPER FOCUS IS ON THE CONNECTION BETWEEN LOUISIANA AND THIRD NATIONAL BANK THEMSELVES. IN THAT REGARD, THE EXHIBITS AND THE AFFIDAVITS THAT I HAVE EXAMINED, THAT WERE PRODUCED AND STIPULATED TO BY THE PARTIES IN LIEU OF ANY LIVE TESTIMONY HERE IN COURT, SHOW THE FOLLOWING: FIRST OF ALL, THE THIRD NATIONAL BANK HAS ITS PLACE OF BUSINESS IN TENNESSEE, AND THERE IS APPARENTLY NO QUESTION THAT IT DOES NOT HAVE A BRANCH OFFICE IN THIS STATE OR ANY OTHER FORM OF DIRECT OPERATION WITH THE STATE, NOR DOES THE PLAINTIFF ARGUE THAT IT REGULARLY TRANSACTS BUSINESS IN LOUISIANA OR CONTRACTS TO SUPPLY GOODS OR SERVICES HERE OTHER THAN THIS UNIQUE CIRCUMSTANCE SURROUNDING THIS PARTICULAR CASE.

SECONDLY, THE TRUST WAS SET UP THROUGH THE INITIATIVE OF A LOUISIANA CITIZEN, MR. HUVAL, APPARENTLY, WHO CONTACTED MR. SMITH, WHO HAPPENED TO BE A RESIDENT OF TENNESSEE, AND HAD PREVIOUSLY SET UP A TYPE OF MULTIPLE EMPLOYER AND INSURANCE TRUST THAT MR. HUVAL WAS INTERESTED IN AND HAD KNOWLEDGE OF AND DEALINGS WITH THAT, AND IT JUST SO HAPPENED THAT IT WAS WITH THIRD NATIONAL BANK.

THIRDLY, THE THIRD NATIONAL BANK BY CHANCE WAS THE TRUSTEE FOR MR. SMITH'S PLAN AND HAD, APPARENTLY FOR THAT REASON ALONE, BEEN CONTACTED BY MR. SMITH ABOUT PERFORMING THE SAME FUNCTION AS REQUESTED IN THIS PARTICULAR CASE. MR. SMITH TESTIFIED THAT THE THIRD NATIONAL BANK DID NOT SOLICIT THE BUSINESS, THAT MR. HUVAL, THE INCORPORATOR, TESTIFIED THAT MR. SMITH HAD TO CONTACT THE BANK REGARDING THE TRUST AGREEMENT, AND THAT HE, MR. HUVAL, NEVER MET WITH ANYONE FROM THE BANK ITSELF.

FOURTH, THAT UNDER THE TRUST AGREEMENT WITH GROUP PROGRAMS, THIRD NATIONAL BANK HAD THE DUTY OF OBTAINING A MASTER POLICY, WHICH IT DID, FROM A NORTH CAROLINA COMPANY. IN KEEPING WITH THAT POLICY, IT HAD NO ADMINISTRATIVE OR COLLECTION DUTIES. IN RETURN FOR PERFORMING THIS FUNCTION, THE BANK RECEIVED ONLY FIVE HUNDRED DOLLARS AS ITS FEE FOR ADMINISTERING THIS TRUST. THE AMOUNT OF THE COMPENSATION ALLEGED IS IN

THE MILLIONS OF DOLLARS IN PREMIUMS THAT ARE AT ISSUE HERE. THAT WAS VERY IMPORTANT IN MY MIND. IT WAS A MINIMAL TYPE OF FEE THAT WAS CHARGED AND AN ADMINISTRATIVE TYPE OF FEE.

FIFTH, AND FINALLY, THAT THIRD NATIONAL BANK HAD NO CONTROL, KNOWLEDGE, OR OWNERSHIP OF PRIVILEGES IN ANY FUNDS HELD IN LOUISIANA BANKS. THE AFFIDAVIT INDICATED THAT IT WAS UNAWARE OF SUCH HOLDINGS AND IT WAS NOT NOTIFIED OF DURHAM'S TERMINATION OF THE ORIGINAL POLICY, AND I'M CONVINCED OF THAT FACT. THE BANK DID NOT KNOW THAT. THE FACTS DO NOT ESTABLISH THAT THIRD NATIONAL BANK HAS THE REQUISITE MINIMUM CONTACTS FOR A LOUISIANA COURT TO EXERCISE PERSONAL JURISDICTION OVER IT, NOR DID THEY REVEAL ANY PURPOSEFUL SYSTEMATIC OR CONTINUOUS COURSE OF CONDUCT IN THIS PARTICULAR STATE. THIRD NATIONAL BANK HAD NO ADMINISTRATIVE DUTIES TO PERFORM HERE NOR DID IT HAVE CONTROL OVER ANY FUNDS LOCATED IN THIS STATE. NO SOLICITATION ON BEHALF OF THIRD NATIONAL BANK IS SHOWN TO HAVE TAKEN PLACE REGARDING THE TRUST. THERE IS NO EVIDENCE OF THIRD NATIONAL HAVING UNDERTAKEN SOME ACT TO PURPOSEFULLY AVAIL ITSELF OF THE PRIVILEGE OF CONDUCTING ACTIVITIES WITHIN THIS STATE. THE HANSON AND STALLWORTH CASES EMPHASIZED THAT NO TRUST ASSETS WERE HELD OR ADMINISTERED IN THE FORUM STATE, AND THAT WAS IMPORTANT IN THIS CASE. THE SAME RATIONALE

APPLIES HERE BECAUSE IT IS CLEAR THAT THIRD NATIONAL BANK DID NOT AND COULD NOT HAVE ADMINISTERED ANY FUNDS OR PREMIUMS IN LOUISIANA BANKS AS THEIR COLLECTION OF FUNDS WAS THE OBLIGATION OF GROUP PROGRAMS UNDER THE TERMS OF THE INSURANCE AGREEMENT.

I APPRECIATE, MR. SHARKEY, YOUR EMPASSIONED [sic] PLEA INSOFAR AS THE LOSSES OF MILLIONS OF DOLLARS WITH REGARD TO LOUISIANA CITIZENS AND I SYMPATHIZE, BUT I CAN'T EXTEND THE JURISDICTION OF THIS STATE WITH LACK OF MINIMUM CONTACTS BECAUSE OF THAT PURPOSE. I UNDERSTAND THAT YOU ARE WANTING TO GET THIRD NATIONAL BANK BECAUSE, OBVIOUSLY, THEY ARE ONE OF THE FEW, IF ANY, PARTIES THAT ARE LEFT IN THIS MATTER THAT MAY BE SOLVENT AND ABLE TO DO THAT, BUT MINIMUM CONTACTS ARE NOT PRESENT IN THIS PARTICULAR CASE. THEREFORE, THE EXCEPTION OF LACK OF JURISDICTION IS HEREBY MAINTAINED. JUDGMENT IS RENDERED AND WILL BE SIGNED ACCORDINGLY.

CERTIFICATE

I, MARIE L. LUTHER, OFFICIAL COURT REPORTER, NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF THE FOREGOING MATTER TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 8TH DAY OF MAY, 1992.

/s/ Marie L. Luther
MARIE L. LUTHER, C.S.R.
OFFICIAL COURT REPORTER
NINETEENTH JUDICIAL
DISTRICT COURT

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	NUMBER 364,878
VERSUS	
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF	DIVISION "L"

PETITION

NOW INTO COURT, through undersigned counsel, comes and appears Douglas D. Green, Commissioner of Insurance of the State of Louisiana, in his capacity as Liquidator of Summit Insurance Plan Trust, who respectfully represents:

1

Named as defendants herein are the following:

(a) Group Programs, Inc., a Louisiana corporation authorized to do and doing business in the State of Louisiana;

(b) National Union Fire Insurance Company of Pittsburgh, PA, a foreign insurance company authorized to do and doing business in the State of Louisiana;

(c) Third National Bank, a national banking association with its principal offices in Nashville, Tennessee;

(d) Liberty Mutual Insurance Company, a foreign insurance company authorized to do and doing business in the State of Louisiana;

(e) Patrick Huval, a person of the full age of majority and resident of the State of Louisiana;

(f) Dianne B. Flores, a person of the full age of majority and resident of the State of Louisiana;

(g) Thomas K. Huval, a person of the full age of majority and resident of the State of Louisiana;

(h) Dale F. Huval, a person of the full age of majority and resident of the State of Louisiana; and

(i) Kathryn H. Pontiff, a person of the full age of majority and resident of the State of Louisiana.

2.

The defendants are liable in solido for the following, to-wit:

3.

On or about March 7, 1985, Group Programs, Inc. was incorporated by Patrick Huval.

4.

On or about March 8, 1985, Group Programs, Inc., acting through Patrick Huval, authorized representative, entered into an "Insurance Trust Agreement" with Third National Bank, in Nashville, and established a trust, said trust identified as the Summit Insurance Plan Trust.

5.

Under the terms of the Insurance Trust Agreement, Third National Bank in Nashville, acting as Trustee of Summit Insurance Plan Trust, was to obtain a policy and/or policies of group insurance for all forms of group life, health, accident, and disability insurance, to provide coverage to any members of the Summit Insurance Plan Trust.

6.

Pursuant to the Insurance Trust Agreement, Third National Bank, acting through Group Programs, Inc., obtained insurance from Durham Life Insurance of Raleigh, North Carolina (hereafter "Durham") for the Summit Insurance Plan Trust. The insurance provided by Durham provided for full group coverage for all health and accident claims.

7.

Durham and Group Programs, Inc. entered into an Agreement effective April 1, 1985, said agreement identified as the "Master Administrative Agreement". The Master Administrative Agreement provided that Group Programs, Inc. would receive a fee for administering the Summit Insurance Plan Trust.

8.

Subsequent to April 1, 1985, Group Programs, Inc. and Patrick Huval began to solicit employers (and their employees) to become members of the Summit Insurance Plan Trust. Group Programs, Inc. collected premiums, administered the billing and payment of claims. The participants in the Summit Insurance Plan Trust were fully insured through Durham.

9.

Premiums were paid by participants in the Summit Insurance Plan Trust. Upon information and belief, commissions were paid to agents of the Huval Insurance Group out of premiums collected from the sale of group insurance to participants (employer/employee members) of the Summit Insurance Plan Trust. For purposes of this petition, the term the "Huval Insurance Group" includes the following corporations: Huval Insurance Agency, Inc.; Huval Insurance Agency of Aranaudville, Inc., Huval Insurance Agency of New Iberia, Inc.; Huval Insurance Agency of Abbeville, Inc.; Huval Insurance Agency of Loreauville, Inc : Inc.; [sic] Huval Insurance Agency of Opelousas, Inc.; and Huval Insurance Agency of Aranaudville, Inc.

10.

During the spring of 1988, Durham notified Patrick Huval and Group Programs, Inc. that it was going to terminate the Master Administrative Agreement with Group Programs, Inc.,and it was going to cease providing any group insurance to Summit Insurance Plan. Durham did cease providing insurance and the 1985 Master

Administrative Agreement was terminated effective June 1, 1988.

11.

During the period of time from April 1, 1985 through June 1, 1988, Durham fully insured any and all employer and/or employee members of the Summit Insurance Plan Trust, and paid the life and health claims for the members of the Trust.

12.

During May, 1988, Summit Insurance Plan Trust, through Third National Bank in Nashville, as Trustee of the Trust, and Group Programs, Inc., through its authorized representative, Patrick Huval, entered into a Master Administrative Agreement. Subsequently, Patrick Huval, Dianne B. Flores, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, Group Programs, Inc., and Third National Bank in Nashville, as Trustee of the Summit Insurance Plan Trust, continued to operate the Summit Insurance Plan Trust.

13.

Upon information and belief, agents of the Huval Insurance Group continued to sell the Summit Insurance Plan Trust to participants.

14.

Under the Master Administrative Agreement, Group Programs, Inc. received an administrative fee. Upon information and belief, commissions were paid to Patrick Huval, Thomas Huval, Dale Huval, the "Huval Insurance Group", and/or to agents of the Huval Insurance Group

out of the premiums collected from the participants (employer/employee members) of the Summit Insurance Plan Trust.

15.

Subsequent to May, 1988, Group Programs, Inc. continued to solicit employers and their employees to become members of the Summit Insurance Plan Trust, collected premiums, paid itself an administrative fee, paid commissions, and administered the payment of claims of the Summit Insurance Plan Trust. Subsequent to May, 1988, Patrick Huval, Dale F. Huval, Thomas Huval, Dwayne Pontiff, the Huval Insurance Group and/or agents of the Huval Insurance Group continued to solicit employers and their employees to become members of the Summit Insurance Plan Trust.

16.

At all times relevant, Patrick Huval was officer (Vice-President), manager, and a director of Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of the Trust and the participants in the Summit Insurance Plan Trust, including but not limited to soliciting participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of the Summit Insurance Plan Trust.

17.

At all times relevant hereto, Dianne B. Flores was an officer (president) and/or director of Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of the Trust and the participants in the Summit Insurance Plan Trust, including but not limited to soliciting or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of the Summit Insurance Plan Trust.

18.

At all times relevant hereto, Thomas Huval was an officer (secretary) and a director of Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of the Trust and the participants in Summit Insurance Plan Trust including, but not limited to, making decisions regarding the Summit Insurance Plan Trust, soliciting or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding the Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of the Summit Insurance Plan Trust.

19.

At all times relevant hereto, Kathryn H. Pontiff was the assistant office manager and was a director of Group Programs, Inc. and personally conducted and/or directed communications, negotiations, and/or made decisions affecting the status of Summit Insurance Plan Trust and its participants, including, but not limited to, soliciting or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of Summit Insurance Plan Trust.

20.

At all times relevant hereto, Dale F. Huval was a director of Group Programs, Inc. and provided services to Group Programs, Inc. and personally conducted and/or directed communications and negotiations and/or made decisions affecting the status of Summit Insurance Plan Trust and/or the participants in the Summit Insurance Plan Trust, including, but not limited to soliciting and/or contributing to the solicitation of participants in the Summit Insurance Plan Trust, making decisions regarding Summit Insurance Plan Trust, allowing or effectuating payments into and/or from the Summit Insurance Plan Trust, and/or exercising discretionary authority concerning the management and/or operation of Summit Insurance Plan Trust.

21.

Dianne B. Flores, Patrick Huval, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff were directors of Group Programs, Inc. and were the principals in charge of Group Programs, Inc. and continued operating the Trust and made decisions regarding the continued operation of the Trust, the receipt of payments from participants in the Trust, the payment of claims, the payment of commissions, the payment of the administrative fee, and/or matters concerning the operation of the Trust.

22.

The Summit Insurance Plan Trust continued to expand and sell insurance to additional participants (employers and employees) subsequent to May, 1988.

23.

Subsequent to May, 1988, Group Programs, Inc., Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, and/or Dianne B. Flores, reviewed and/or revised documents, made decisions and/or supervised decisions regarding any and all advertising materials, forms, circulars, pamphlets, and other materials disseminated for the purposes of soliciting employers and employees to become members of the Summit Insurance Plan Trust and/or to continue as members of the Trust and/or knew or should have known of decisions regarding the content (and/or lack of content) of any materials disseminated.

24.

By letter dated February 21, 1990, Robert G. Mayer, Vice President of Third National Bank, wrote Patrick

Huval, Groups Programs, Inc., notifying him that in accordance with Item 5 of the Trust Agreement dated March 8, 1985, Third National Bank was resigning as Trustee of the Summit Insurance Plan Trust, to be effective thirty (30) days from the date of the letter.

25.

Third National Bank, Group Programs, Inc., Patrick Huval, Thomas Huval, Dale Huval, Kathryn Pontiff, and Dianne B. Flores breached their duty to the Summit Insurance Plan Trust and its individual members by failing to terminate the Summit Insurance Plan Trust and/or failing to require that the Summit Insurance Plan Trust be terminated and/or continuing to operate the Trust subsequent to May, 1988.

26.

Subsequent to May, 1988, the Summit Insurance Plan Trust was never fully insured by any group master insurance policy. Subsequent to May, 1988, health insurance coverage was only partially provided by several insurers, said policies generally providing employee medical hospitalization benefits specific excess insurance coverage, and/or employee medical hospitalization benefit aggregate excess insurance coverage.

27.

On information and belief, Patrick Huval, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff are shareholders, directors, and/or officers of one or more of the companies (agencies) comprising the "Huval Insurance Group". The Huval Insurance Group continued to solicit participants and/or solicit continued participation (by

employers and employees) in the Summit Insurance Plan and/or contributed to the solicitation of participants in the Summit Insurance Plan Trust.

28.

Group Programs, Inc., Third National Bank, Patrick Huval, Dianne B. Flores, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff, are liable in solido in the following non-exclusive particulars:

(a) Breach of contract;

(b) Breach of fiduciary duty;

(c) Breach of duty;

(d) Errors, acts, and/or omissions in managing and/or supervising the Summit Insurance Plan Trust;

(e) Failing to secure and obtain an insurer and/or insurers to provide fully insured health insurance for members of the Summit Insurance Plan Trust;

(f) Causing or allowing the use of incomplete, incorrect, and/or misleading information to be distributed regarding the Summit Insurance Plan Trust;

(g) Omitting or failing to require that sufficient, correct, and/or non-misleading information be distributed regarding the Summit Insurance Plan Trust;

(h) Negligence and breach of duty in failing to provide a solvent and fully insured health plan for employers and employee members of the Summit Insurance Plan Trust;

(i) Causing or allowing the Summit Insurance Plan Trust to operate subsequent to the cancellation of group insurance by Durham;

(j) Failing to exercise the degree of care that should have been exercised by a third party administrator and by a trustee of the Insurance Plan Trust.

(k) Causing or allowing the payment of commissions to entities controlled by principals of Group Programs, Inc. and/or causing or allowing the payment of excessive commissions;

(l) Causing or allowing loans to be made from the Summit Insurance Plan trust;

(m) Omitting or failing to properly supervise the receipt and distribution of funds to and from the Summit Insurance Plan Trust;

(n) Causing or allowing the co-mingling of funds with Trust funds;

(o) Failing to maintain the Summit Insurance Plan Trust pursuant to the Trust Agreement;

(p) Causing or allowing employers and their employees to become members of the Summit Insurance Plan Trust in states where the Summit Insurance Plan Trust was not properly authorized to sell insurance;

(q) Failing to act in the best interest of the participants of the Summit Insurance Plan Trust;

(r) Failing to take steps to remedy any breaches of duty and/or breach of contract;

(s) Causing and/or allowing the Summit Insurance Plan Trust to operate and/or solicit participants and/or causing or allowing continued participation in the Trust when it was known or should have been known that the Trust was not paying claims and/or was not able to pay claims and/or was not fully insured;

(t) Causing or allowing groups to become members of the Summit Insurance Plan Trust when they knew or should have known that the addition of such groups was not in the best interest of the Trust;

(u) Causing or allowing solicitation of participants in the Trust and/or continued participation (of employers and employees) in the Trust when the Trust was not fully insured and/or after the Trust should have been terminated;

(v) Causing or allowing sums to be received from participants (employers and/or employees) for the purposes of acquiring or maintaining full health insurance coverage;

(w) Causing or allowing Group Programs, Inc. to obtain a fixed billing fee in addition to any administrative fee obtained, and

(x) Failing to provide the Trust with trained professionals to analyze the risks assumed by it and to professionally administrate the program.

29.

Participants in the Summit Insurance Plan Trust have incurred medical expenses which have not been reimbursed. Defendants failed to act solely in the best interest

of the participants and beneficiaries of the Plan, with the care, skill, prudence, and diligence required and defendants failed to provide and/or omitted material information regarding the insurance coverage in effect, the stability of the Summit Insurance Plan Trust, and/or the rating of any insurer providing coverage.

30.

As a result of the errors, acts, breaches, and/or omissions of Group Programs, Inc., Third National Bank, Patrick Huval, Dianne B. Flores, Thomas K. Huval, Dale F. Huval, and Kathryn H. Pontiff, the Summit Insurance Plan Trust and/or participants and/or beneficiaries of the Summit Insurance Plan Trust have incurred significant losses, which losses include, but are not limited to, unpaid health and/or life insurance claims of employers and/or employee participants in the Summit Insurance Plan Trust.

31.

National Union issued a policy of insurance which was in full force and effect and afforded coverage for the errors, actions, breaches, and/or omissions of Group Programs, Inc., Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, and/or Dianne B. Flores.

32.

Upon information and belief, Liberty Mutual Insurance Company issued a policy of insurance to Third National Bank which was in full force and effect and afforded coverage for any and all losses which resulted.

WHEREFORE, Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as

Liquidator of the Summit Insurance Plan Trust, prays that, after all due proceedings had, there be judgment in favor of Douglas D. Green, Commissioner of Insurance in his capacity as Liquidator of the Summit Insurance Plan Trust and against the defendants, Group Programs, Inc., Third National Bank, Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, Dianne B. Flores, National Union Fire Insurance Company of Pittsburgh, PA, and Liberty Mutual Insurance Company, in solido, for any and all sums, losses, damages, expenses, and costs which are reasonable in the premises and for interest thereon from the date of the judicial demand. Petitioner further prays for all just, equitable, and statutory relief.

Respectfully submitted:

RUBIN, CURRY, COLVIN & JOSEPH
A Professional Law Corporation

/s/ Bernard J. Sharkey, Jr.
Richard A. Curry,
Bar Roll No. 4671
Barnard J. Sharkey, Jr.,
Bar Roll No. 1592
Ninth Floor, One American Place
Baton Rouge, Louisiana 70825
Telephone: 504/383-9000

Attorneys for Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as Liquidator of the Summit Insurance Plan Trust

SERVICE INFORMATION

Please serve:

Group Programs, Inc.
through its agent for service of process:
Patrick Huval
Route 1, Box 1302
St. Martinville, Louisiana 70582

Patrick Huval
Route 1, Box 1302
St. Martinville, Louisiana 70582

Dianne B. Flores
(please hold service at this time)

Thomas K. Huval
524 Claude Street
Breaux Bridge, Louisiana

Dale F. Huval
Route 1, Box 711
Breaux Bridge, Louisiana

Kathryn H. Pontiff
(please hold service at this time)

National Union Fire Insurance Company
of Pittsburgh, PA
through its agent for service of process:
Walter "Fox" McKeithen
Secretary of State
State of Louisiana
3851 Essen Lane
Baton Rouge, Louisiana 70809

Liberty Mutual Insurance Company
through its agent for service of process:
Walter "Fox" McKeithen
Secretary of State
State of Louisiana
3851 Essen Lane
Baton Rouge, Louisiana 70809

Third National Bank
201 Fourth Avenue North
Nashville, Tennessee 37219

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	NUMBER 364,878
VERSUS	
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF	DIVISION "L"

FIRST SUPPLEMENTAL AND AMENDED PETITION

NOW INTO COURT, through undersigned counsel, comes and appears Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as liquidator of the Summit Insurance Plan Trust, who supplements and amends the original petition filed in this matter by adding the following paragraphs and respectfully represents:

A.

Plaintiff, Commissioner of Insurance for the State of Louisiana, supplements and adds the following paragraphs to its original petition:

33.

National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") issued one or more policies of insurance which were in full force and effect, which policy and/or policies would provide coverage for the breach of duty, neglect, error, actions, conduct, breaches and/or omissions of Third National Bank in Nashville and would provide coverage against the losses and damages of the nature described herein and herein sued upon, and by virtue of said policy and/or policies, National Union Fire Insurance Company of Pittsburgh, Pa. is liable, in solido, unto your petititoner.

34.

National Union issued a policy and/or policies of insurance which were in full force and effect and which afforded coverage for the breach of duty, breaches, neglect, errors, actions, omissions, and/or conduct of Group Programs, Inc., Patrick Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, and/or Dianne B. Flores and which provided coverage for the damages and losses of the nature herein sued upon and by nature of said policy and/or policies National Union is liable, in solido, unto your petitioner.

35.

The paragraphs of the original petition are adopted, incorporated, and are reiterated herein as if repeated in extenso.

WHEREFORE, Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as liquidator of the Summit Insurance Plan Trust prays that

he be granted leave of court for the filing of the First Supplemental and Amended Petition.

Douglas D. Green, Commissioner of Insurance for the State of Louisiana, in his capacity as liquidator of the Summit Insurance Plan Trust further prays that after all due proceedings had, there be judgment in favor of Douglas D. Green, Commissioner of Insurance for the State of Louisiana in his capacity as liquidator of the Summit Insurance Plan Trust and against the defendants, Group Programs, Inc., Third National Bank in Nashville, Patrick E. Huval, Thomas K. Huval, Dale F. Huval, Kathryn H. Pontiff, Dianne B. Flores, National Union Fire Insurance Company of Pittsburgh, Pa., and Liberty Mutual Insurance company, in solido, for any and all sums, losses, damages, expenses, and costs which are reasonable in the premises and interest on all sums thereon from the date of judicial demand. Petitioner further prays for all just, equitable, and/or statutory relief.

Respectfully submitted:

RUBIN, CURRY, COLVIN
& JOSEPH
A Professional Law Corporation

/s/ Bernard J. Sharkey, Jr.
Richard A. Curry
Bar Roll No. 4671
Bernard J. Sharkey, Jr.
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Ninth Floor,
One American Place
Baton Rouge, Louisiana 70825
Telephone: 504/383-9000

Attorneys for
Douglas D. Green,
Commissioner of Insurance
for the State of Louisiana

SERVICE INFORMATION:

Please serve:

National Union Fire Insurance Company
of Pittsburgh, Pa.
through its attorney of record:
Michael Juneau
Juneau, Judice, Hill & Adley
926 Coolidge Boulevard
Lafayette, Louisiana 70503-2434

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	NUMBER 364,878
VERSUS	
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF	DIVISION "L"

ORDER

IT IS ORDERED that the foregoing First Supplemental and Amended Petition be allowed and filed in the record of these proceedings according to law.

Baton Rouge, Louisiana, this ___ day of June, 1991.

JUDGE, 19TH JUDICIAL
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
AT BATON ROUGE

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana, Plaintiff, v. GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF, Defendants.	)	Civil Action No. 91-208 Section: A Judge John V. Parker

THIRD NATIONAL BANK IN NASHVILLE'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Third National Bank in Nashville ("TNB") respectfully moves this Court to dismiss TNB from this case pursuant to Rules 12(b)(2) and 12(b)(4) of the Federal Rules of Civil Procedure. TNB will show that it lacks the requisite minimum contacts with Louisiana that would provide this Court with a basis for personal jurisdiction over TNB. In addition, TNB will show that the Citation served upon it did not comply with applicable Louisiana

law to be valid, and that TNB is therefore not properly a party to this lawsuit. In support of this motion, TNB relies upon a contemporaneously filed memorandum of law, the affidavits of Gibbs Smith and Richard Fitzgerald, and excerpts from the deposition of Patrick Huval, all of which are attached as exhibits to this motion. [Exhibits not attached.] TNB requests an order of this Court dismissing it from this action.

Respectfully submitted,

/s/ Thomas P. Kanaday, Jr.
Thomas P. Kanaday, Jr.

FARRIS, WARFIELD
& KANADAY
Nineteenth Floor
424 Church Street
Nashville, Tennessee 37219
(615) 244-5200

/s/ Julie E. Schwartz
Julie E. Schwartz

LISKOW & LEWIS
One Shell Square, 50th Floor
New Orleans, Louisiana 70139-5001
(504) 581-7979

Attorneys for Defendant
Third National Bank
in Nashville

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was sent by first class mail, postage prepaid, to Richard A. Curry, Attorney for Plaintiff, RUBIN, CURRY, COLVIN & JOSEPH, 1400 One American Place, Baton Rouge, Louisiana 70825; John E. McElligott, Jr., Attorney for Group Programs, Inc., Patrick Huval, Dianne B. Flores, Dale F. Huval, and Kathryn Pontiff, DAVIDSON, MEAUX, SONNIER, McELLIGOTT & SWIFT, Post Office Drawer 2908, 810 South Buchanan Street, Lafayette, Louisiana 70502-2908; Michael J. Juneau, Attorney for National Union Fire Insurance Company of Pittsburgh, Pennsylvania, JUNEAU, JUDICE, HILL, & ADLEY, 926 Coolidge Boulevard, Lafayette, Louisiana 70503-2434; and Charles A. Schutte, Jr., Attorney for Liberty Mutual Insurance Company, MATHEWS, ATKINSON, GUGLIELMO, MARKS & DAY, 320 Somerulos Street, Post Office Box 3177, Baton Rouge, Louisiana 70821-3177, on the 7th day of March, 1991.

/s/ Julie E. Schwartz
Julie E. Schwartz

INSURANCE TRUST AGREEMENT

This Trust Agreement is made and entered into this 8 day of March, 1985 by and between Group Programs, Inc., as Grantor, ("Grantor") and Third National Bank in Nashville, a National Banking Association with its principal offices in Nashville, Tennessee as Trustee ("Trustee").

For and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the parties hereto agree as follows:

1. *Recitals.* Grantor desires to establish a Trust for the purpose of holding one or more group master insurance policies issued by one or more insurance companies for the purpose of providing insurance benefits to various employees of participating employers (Participating Employers) and their covered dependents who accept in writing the terms of this Trust Agreement and agree to be bound by it. Grantor intends to act as Administrator and agrees to accept the responsibility for all administrative duties required in connection with any such group master policy conditions hereinafter set forth.

2. *Establishment of Trust.* The Trustee declares that it will receive and hold, as Trustee, the group master insurance policy or policies described herein, and that it will administer the Trust on the terms and conditions hereinafter set out. This Trust shall be known as the:

Summitt Insurance Plan Trust ("Trust").

3. Duties of Trustee.

A. The Trustee, acting through the Grantor, shall make application to an insurance company or companies, duly authorized to conduct the business of insurance in the State of Tennessee, and other states in which Participating Employers are located, for the issuance of a policy or policies of group insurance, which term shall include, but not be limited to, all forms of group or franchise life, health, accident, and disability insurance, to be issued to the Trustee, providing such benefits for Participants or their covered dependents as the Grantor, acting in its capacity as Administrator shall determine from time to time, in its sole discretion. Such policy or policies may contain such provisions and be subject to such limitations and conditions as Administrator as agreed upon with the Insurance Company shall determine from time to time, in its sole discretion.

B. The Trustee shall hold such policy or policies of group insurance and safely keep same and shall execute such documents as may require its signature as owner of such policy or policies for the purpose of obtaining and maintaining the policy or policies in force, or for any other purpose required of the owner of such group master policy or policies.

C. The Trustee shall act at the direction of Administrator in taking any and all actions regarding the termination, modification or replacement of any policy held hereunder and may delegate to Administrator the authority to act on its behalf in regard to any such termination, modification or replacement.

D. The Trustee shall have no duty to pay or collect any premiums or assessments on any group master policy or policies. Trustee shall not be required to institute any form of legal proceeding to collect any such premium or assessment. Likewise, the Trustee shall have no duty to determine whether the Administrator is properly performing its duties hereunder.

4. *Duties of Grantor.*

A. Grantor shall act as Administrator and perform all administrative duties in connection with the group master policy or policies of insurance issued to Trustee not performed by the issuing insurance company including, but not limited to, billing, collecting, and remitting premiums to the appropriate insurance company or companies, processing of applicatins [sic] for insurance coverage, issuance of certificates of insurance, and processing and payment of claims, together with making all decisions as to purchase, issuance, termination, modification or replacement of such group master policy or policies.

B. Administrator agrees to pay Trustee its regular and customary fee each year, or portion thereof, in advance, for its services hereunder, to be determined in accordance with Trustee's then current fee schedule. In addition, Administrator shall reimburse Trustee for any and all reasonable and necessary expenses which it may incur in the performance of its duties as Trustee including, but not limited to, attorney fees and costs.

5. *Resignation or Removal of Trustee.*

A. Trustee may resign at any time by giving to Administrator 30 days prior written notice of resignation. Trustee may resign immediately at any time that Administrator amends, or attempts to amend, this Trust Agreement without the written consent of Trustee.

B. Administrator may remove Trustee at any time by giving to Trustee 30 days prior written notice of removal.

6. *Appointment of Successor Trustee.* In the event of resignation or removal of any Trustee, Administrator shall have the right to appoint a Successor Trustee. Such Successor Trustee may qualify by accepting this Trust in writing to Administrator.

7. *Amendment or Termination of Trust.*

A. This Trust may be terminated by Administrator at any time by giving to Trustee and all Participants 30 day [sic] prior written notice of termination.

B. This Trust shall terminate immediately in the event that any group master insurance policy or policies held hereunder terminate, lapse, expire without being renewed, or are cancelled for any reason unless the coverage or coverages provided in such policy or policies are replaced immediately without any gap(s) in coverage by like coverages provided by a substitute or successor insurance company approved by Trustee in writing in advance.

C. This Trust may only be amended by the Administrator, with the consent of Trustee. Both the

Amendment and Trustee's consent thereto shall be in writing to be effective.

8. *Liability of Trustee and Hold Harmless.*

A. Trustee shall be protected in relying on any paper or document believed by it to be genuine and to have been made, executed or delivered by the party purporting to have made, executed or delivered the same, and shall be protected in relying and acting upon the opinion of counsel or upon the guidance and directions of Administrator in connection with any matter pertaining to execution of the Trust. The Trustee shall not be liable for any action taken or omitted by it in good faith nor for the act of any agent, employee, or attorney selected by Trustee with reasonable care. The Trustee may delegate any of its ministerial powers or duties hereunder to its agents or employees.

B. Trustee shall be protected in acting upon direction of the Administrator, and Administrator shall hold Tustee [sic] harmless from any and all liability, loss, damage, cost or claim of any type whatsoever as a result of serving as Trustee hereunder except to the extent that such liability, loss, damage, cost or claim results from the negligence of Trustee in failing to safely hold the group master insurance policy or policies hereunder or in failing or refusing to perform any duty set out in Paragraph 3 hereof after written notice and request by Administrator.

9. *Dealing with Third Parties.*

A. No insurance company or other party shall be deemed a party to this Trust for any purpose or be

deemed responsible for its validity or sufficiency. The obligations of any insurance company or other party contracting with the Trustee shall be measured and determined solely by the terms and conditions of the group master insurance policy or policies or other contracts which may be involved.

B. Any employer may become a Participating Employer in the insurance plan or plans provided by the group master insurance policy or policies held by Trustee by applying therefore and meeting all requirements imposed by Administrator and the insurance company underwriting such policy or policies including, but not limited to, underwriting and eligibility requirements. The terms and limitations of the insurance coverages provided to the Participants and their covered dependents the eligibility therefore, and the extension and termination of coverage thereunder shall be governed solely by the rules and regulations promulgated by Administrator and approved by the underwriting insurance company or companies, and the applicable certificates and policies of insurance. Trustee shall have no direct or implied obligation to any Participating Employers.

10. *Spendthrift Clause. Limited Interest.*

A. No part of the Trust Estate, the group master insurance policy or policies held by Trustee hereunder nor the insurance proceeds or benefits payable under such group master insurance policy or policies, shall be subject to executing or other legal process for any abligation [sic] of any Participating Employer, or to the claims of creditors of any Participating Employer, in any manner, nor shall any such Participating Employer, have the

power to sell, mortgage or encumber same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise (except to the extent that policy benefits may be assignable to health care providers under the terms of any policy or policies hereunder.)[.]

B. During the continuance of this Trust, no Participating Employer, nor any person claiming by, through, or under any one or more of them, shall have any right, title or interest in or to the Trust Estate, or any part thereof, except for such person's interest in any benefits provided under the terms of the group master insurance policy or policies hereunder.

11. *Severability.* In the event that any one or more provisions of this Trust Agreement shall be held or determined to be invalid or unenforceable by any court of competent jurisdiction or other appropriate authority, the remainder of this Trust Agreement shall continue and remain in full force and effect as if said invalid and/or unenforceable profision [sic] or porvisions [sic] had not been included herin. [sic]

12. *Governing Law.*This Trust is created and accepted in the State of Tennessee and all questions pertaining to the validity or construction of said Trust shall be determined in accordance with the laws of the State of Tennessee.

In witness whereof, and as evidence of acceptance ofthe [sic] Trust created hereby, the parties have executed this agreement of the 15 day of March, 1985.

Witnesses:
/s/ Linda Carroll

Witnesses:
/s/ Dianne B. Flores
/s/ Patricia [Illegible]

Third National Bank
in Nashville,
Trustee

By: /s/ Elizabeth C. Thompson
Title
Vice President

Group Programs, Inc.
Grantor/Administrator

By: /s/ Patrick Huval President
Title

[LOGO]

DURHAM LIFE INSURANCE COMPANY
(HEREIN CALLED THE INSURANCE COMPANY)
HOME OFFICE: RALEIGH, NORTH CAROLINA

POLICY NUMBER : 3171

GROUP POLICYHOLDER:

THIRD NATIONAL BANK, NASHVILLE, TENNESSEE, TRUSTEE OF THE SUMMIT INSURANCE PLAN TRUST

EFFECTIVE DATE : May 1, 1985

ANNIVERSARY DATE : May 1

PREMIUM DUE DATE:

First day of the calendar month

POLICY MONTH:

The first day of a period which begins with the premium due date and ends on the day preceding the next following premium due date.

In consideration of the application for this policy, a copy of which is attached and made a part hereof, and in consideration of the payment by the Policyholder during the continuance of this policy of all premiums when they fall due as provided herein, the insurance Company agrees to pay the amounts of insurance set forth herein, with respect to the several persons insured hereunder, in accordance with and subject to the provisions of this policy.

The Provisions hereafter contained are part of this policy as fully as if recited over the signatures affixed below.

In Witness Whereof, the Insurance Company has issued this policy as of the effective date above, which is the date of issue hereof.

/s/ F. F. Skipper
Secretary

/s/ [Illegible] Womble
President

/s/ Romet Stevens, Jr.
Registrar

GROUP INSURANCE POLICY AS MODIFIED BY G1380 PAGES ATTACHED HERETO

G10300

SECTION — AMOUNTS OF INSURANCE AND COVERAGES — PLAN CHANGES

You are insured for the amounts and coverages for which you applied and were accepted by us[.] Your amount of insurance will be decreased or any coverage terminated automatically should your status under your employer's plan change or if your employer reports any such changes to us[.] Your amount of insurance will be increased or a coverage may be added only if all these conditions are met:

(a) your status changes to one eligible for increase or coverage addition.

(b) it is reported to us by your employer.

(c) you have furnished us with the current health history and status for yourself and any dependent who is a covered person and whose coverage would be affected by the change and have been approved by us for the change. Any approval of an increased amount of insurance, or coverage added, will be effective on the first day of a calendar month, subject

on that day to the same provisions as the effective date provisions above which require you to be actively at work or a dependent not then be totally disabled nor confined to a hospital or other institution.

SECTION — JURISDICTION

This policy is delivered in and is governed by the laws of Tennessee.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
AT BATON ROUGE

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana, Plaintiff, v. GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF, Defendants.	Civil Action No. 91-208 Section: A Judge John V. Parker

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

AFFIDAVIT OF RICHARD FITZGERALD

RICHARD FITZGERALD, having been duly sworn, does depose and state that the following is based upon his personal knowledge:

1. I am a resident of Nashville, Tennessee.

2. I am a first vice-president of Third National Bank in Nashville. In that capacity I supervise the operation of

the Employee Benefit Department of Third National Bank's Trust Department.

3. Third National Bank in Nashville is a national banking association with its principal place of business in Nashville, Tennessee.

4. Third National Bank in Nashville has no branches or other offices located within Louisiana.

5. On or about January 22, 1991, Third National Bank was served with a Citation and Petition from the Nineteenth Judicial District Court of Louisiana. True and correct copies of the Citation and Petition as they were served upon Third National Bank are attached hereto as *Exhibit 1.* [Exhibit 1 is found at A-23.]

6. In connection with my responsibilities of supervising the Employee Benefit Department, I have reviewed the records of Third National Bank relating to the trusts between Third National Bank and Group Programs, Inc.

7. True and correct copies of the two Insurance Trust Agreements between Third National Bank and Group Programs, Inc. are attached hereto as *Exhibits 2 and 3,* respectively. [Exhibit 2 is found at A-47; Exhibit 3 is not attached.]

8. Third National Bank did not ever solicit this business from anyone in Louisiana, nor did Third National Bank transact any business in the State of Louisiana that was connected with its responsibilities under these trusts.

FURTHER AFFIANT SAYETH NOT.

/s/ Richard Fitzgerald
RICHARD FITZGERALD

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, Kathleen Patti Snow, a Notary Public of said County and State, RICHARD FITZGERALD, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 28th day of February, 1991.

/s/ Kathleen Patti Snow
Notary Public

My Commission Expires: 7-23-94
[SEAL]

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

NO. 364,878 DIVISION "L"

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana

versus

GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF

FILED: _____ _____

DEPUTY CLERK

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

AFFIDAVIT OF RICHARD FITZGERALD

RICHARD FITZGERALD, having been duly sworn, does depose and state that the following is based upon his personal knowledge:

1. I am a resident of Nashville, Tennessee.

2. I am a first vice-president of Third National Bank in Nashville ("Third National"). In that capacity I supervise the operation of the Employee Benefit Department of Third National's Trust Department.

3. Upon the commencement of this lawsuit, and after some investigation of the facts had begun, I became

aware that bank accounts had been opened in Louisiana banks (the "Accounts") in the name of Summit Insurance Plan Trust (the "Trust"). Prior to the commencement of this lawsuit, Third National was unaware of the existence of these Accounts.

4. In addition, after the commencement of this lawsuit and after discovery had commenced, I became aware that specific and aggregate coverage insurance policies had been obtained in the name of the Trust (the "Insurance Policies). Prior to the commencement of this lawsuit, Third National was unaware of the existence of these policies.

5. Third National never signed signatory cards for the Accounts, which are listed in the plaintiff's Supplemental Memorandum in Opposition to Third National Bank's Motion to Dismiss for Lack of Personal Jurisdiction in this matter (the "Supplemental Memorandum"). Further, Third National was never advised that these Accounts had been opened. Third National did not have check writing or other privileges associated with access to the Accounts, nor did it ever receive statements from the banks where these Accounts were open. To the best of my knowledge, Third National had no knowledge these Accounts existed. Third National had no ownership interest in these Accounts and had no power or authority to control the funds in these Accounts.

6. The Trust Agreement between Group Programs, Inc. and Third National did not authorize Third National to open these Accounts or to have any interest in these accounts.

7. Third National has no record showing that it had any interest or control over the Insurance Policies, which are identified in the Supplemental Memorandum. Third National did not apply for those Insurance Policies nor was it aware of the existence of those Insurance Policies until after the commencement of this lawsuit.

8. Third National did not learn that the Durham Life Policy had been terminated until early 1990, Third National has no record that it was advised by Durham Life Insurance Company, Group Programs, Inc. or any other entity that a policy obtained from Durham Life Insurance Company (the "Durham Life Policy") was being terminated or had been terminated.

9. Group Programs, Inc. ("Group Programs") never advised Third National that the insurance policy offered by the Summit Insurance Plan Trust (the "Trust") was changed from being fully insured by the Durham Life Policy to being self-insured. Third National had no knowledge of this change and did not authorize, sanction or participate in the change in the Trust from being fully insured to self-insured.

10. With respect to the Master Administrative Agreement effective June 1, 1988, Third National did not believe it was required to perform the duties listed under Article I, Section 1. Third National did not perform the duties listed for "The Company" to undertake.

FURTHER AFFIANT SAYETH NOT.

/s/ Richard Fitzgerald
RICHARD FITZGERALD

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, Kathleen Patti Snow, a Notary Public of said County and State, RICHARD FITZGERALD, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at Office, this 22d day of January, 1992.

/s/ Kathleen Patti Snow
Notary Public

My Commission Expires: 7-23-94

[SEAL]

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA	:	NUMBER 354,758
PLAINTIFF,	:	DIVISION "G"
VERSUS	:	
THIRD NATIONAL BANK, AS TRUSTEE OF THE SUMMIT INSURANCE PLAN TRUST, PATRICK E. HUVAL, GROUP PROGRAMS, INC., THE SUMMIT INSURANCE PLAN, AND THE SUMMIT INSURANCE PLAN TRUST	:	
DEFENDANT.	:	

TRANSCRIPT OF THE DEPOSITION OF
PATRICK E. HUVAL

REPORTED IN THE ABOVE ENTITLED AND NUMBERED CAUSE, BEFORE ESTELLA O. CHAMPION, CERTIFIED SHORTHAND REPORTER, AUTHORIZED TO ADMINISTER OATHS OF WITNESSES, PURSUANT TO SECTION 961.1 OF TITLE 13 OF THE LOUISIANA REVISED STATUTES OF 1950, AS AMENDED, PURSUANT TO THE FOLLOWING STIPULATION:

REPORTED AT THE OFFICES OF:

DAVIDSON, MEAUX, SONNIER, McELLIGOTT
& SWIFT
810 SOUTH BUCHANAN STREET
LAFAYETTE, LOUISIANA 70502
COMMENCING AT 10:00 A.M. ON
OCTOBER 25, 1990.

* * *

[p. 10] trust that they administered, sort of the same thing, similar to what Summit was.

Q He was living in Nashville?

A Yes.

Q And why were you put in contact with him? How did they think he would be able to help you?

A Well, he knew Mr. Smith, the A.I.G. field agent that suggested it to me, knew Mr. Smith through – both had worked at one time with Caroon and Black out of Nashville, or maybe Memphis, but they had worked together before. They knew each other.

Q Did you personally meet with Gibbs Smith?

A Yes.

Q You went up to Nashville?

A Yes.

Q This was in 1985?

A As a matter of fact I employed him as a consultant to help me with the trust.

Q Was this in 1985?

A 1985.

Q What was the purpose of this retainer agreement with Smith? What were you trying to accomplish with him?

A First of all he was operating a trust, and I and the girl that handled the computer and the

* * *

[p. 14] Q. What was the name of Mr. Smith's M.E.T?

A. I can't remember. I'm going to say Benefit Programs, Inc., but I'm not positive of that.

Q. Do you know if it was doing business in Louisiana?

A. No, I don't know that.

Q. What did you understand the trustee's role would be under this insurance trust agreement; that is the role of Third National Bank of Nashville?

A. As it says there, to hold the policies and amendments to the policies and things of that sort.

Q. The agreement, L-1, shows a signature by Elizabeth Thompson on behalf of Third National Bank, listing her as a vice-president of Third National Bank. Did you ever meet with that woman?

A. No, I didn't.

Q. Did you meet with anyone at Third National Bank of Nashville?

A. No, I didn't.

Q. Ever?

A. Ever.

Q. At the time the trust was set up, did you have occasion to speak by telephone with anybody at Third National Bank?

A. I don't remember that. I couldn't remember [p. 15] if I did or not.

Q. Who arranged to have this signed by Third National Bank in Nashville?

A. Mr. Smith.

Q. So he took it over there and had it executed by them?

A. I don't know if I mailed it to him and he mailed it to them or whatever, but initially.

Q. What did you understand Third National Bank of Nashville would get out of this trust agreement? Why did they enter into it?

A. I have no idea.

Q. Let me show you a copy of a letter from Third National Bank from Elizabeth Thompson addressed to Mr. Smith, ask if you recall getting a copy of that letter?

A. I don't remember getting – I don't remember getting that. I may have since it says, to Pat Huval.

Q. Do you think Mr. Smith may have sent it to you?

A. Could be. Could be, I don't remember.

Q. You just don't remember?

A. Could be, I don't remember.

MR. CURRY: I will mark it as L-2.

[p. 16] Q. Do you know when the trust agreement terminated?

MR. McELLIGOTT: When it was supposed to terminate?

A. I think they issued a termination in 1990.

Q. You received correspondence from Third National Bank?

A. Yes, that they were going to terminate it about the time of the liquidation notice.

MR. CURRY: I will mark as L-3 a letter from a Mr. Robert Mayer addressed to you dated February 21, 1990.

A. Yes, I remember receiving that.

Q. Is that the first communication you recall seeing where they attempted to terminate the trust?

A. That's correct.

Q. Prior to that you never received any communication from Third National Bank purporting to terminate the trust?

A. Maybe something, I might have received correspondence on amendments that we may have sent or things like that, but not on termination.

Q. You don't have any specific recollection of any amendments?

A. No.

* * *

[p. 27] A. Sometime in the spring of '88 I received a letter from Durham Life that they were going to terminate our trust; and they had another trust in Louisiana they were going to terminate, that they actually moved out of several states at that time.

Mr. Romer Stevens had retired, and I think the management had changed in that department , and they were reducing their volume in small group trusts.

I asked them at the time for an extension of a month or two, which they gave me, to be effective June 1.

Q. Did they cite loss ratios or experience as the reason?

A. No, no, they just indicated they were getting out of Louisiana.

Q. Do you recall the name of the other trust that was being terminated at the same time?

A. I don't remember the name, but it was out of the New Orleans area.

Q. It was another multiple employer trust?

A. Yes.

Q. What did you do in reaction to this notice from Durham, other than getting an extension and so forth?

A. Well, I first attempted to get carriers to [p. 28] replace Durham, first of all. I, you know, with the help of Mr. Gibbs Smith and other people in the industry, I contacted a number of carriers. In addition to that, I also solicited quotes from carriers on specific and aggregate

coverage for the trust as a backup or a replacement of the fully insured product. And I had gotten one company – and I don't remember the name or the location – to indicate a willingness to fully insure it. But they were small and associated with offshore captive type operations, so I wasn't secure, wasn't comfortable with that. So I decided to move it into a specific and aggregate coverage basis.

Q. Prior to June 1 of '88, you had none of the stop-gap coverages to which you have made reference?

A. Didn't have to do that, Durham Life –

Q. Because it was all fully insured?

A. Fully insured, and Durham Life handled all the insurance.

Q. What types of insurance had Durham provided?

A. Had Durham provided?

Q. Right.

A. The life and health insurance.

Q. In its entirety? The full insurance that Summit provided was provided by Durham. Is the right?

[p. 29] A. Yes, exactly.

Q. What reasons were given by the other companies for refusing to provide coverage?

A. Well, the insurance industry is highly cyclical; not only in property and casualty, but the life and health – not the life, but the health, also. And at that time the small group business was not popular, or the companies were not expanding into the small group business.

Four, five years before they may have been the hottest thing going, and then four, five years later, at that current time, not very many companies were expanding their operations in the small group business.

Q. Before I leave the Durham plan, let me ask you a couple of questions about the addenda to L-4. Am I reading the commission and fee information correctly to mean that on every policy written, for the first year commission would be ten percent?

A. The first year commission to the agent would be ten percent.

Q. That would in all cases be the total amount of commission paid for that insurance?

A. Correct, to the agent.

Q. There wasn't a commission as such paid to [p. 30] anyone else, besides the agent who actually placed it?

A. No, that's correct.

Q. Group Programs, Inc., if they sold it directly would receive that commission?

A. We didn't sell any, Group Programs, Inc., didn't sell any policies.

Q. So Group Programs, Inc., never got a fee as commission?

A. No, we got an administrative fee of 13 percent, plus an additional $15 dollars per group, what they call billing fee or administrative fee.

Q. $15 per month?

A. Per month per group.

Q. And that went directly to Group Programs, Inc.

A. Group Programs, right.

Q. And that was treated as an administrative fee?

A. Right, it was called a billing fee, and it was either called an administrative fee or billing fee, mostly billing fee.

Q. Now the administrative fee of 13 percent did go directly to Group Programs, Inc?

A. That's correct.

Q. And that was 13 percent of the gross [p. 31] premiums collected?

A. That's correct.

Q. And did I understand your testimony earlier to mean that all of the premiums went directly into the Durham account in North Carolina?

A. First of all, it was deposited in a general ledger account in Group Programs.

Q. In south Louisiana?

A. Right. And then on a monthly basis we remitted to Durham Life all but 23 percent. We paid ten percent to the agent. We remitted what, 77 to Durham Life, and paid ourselves the 13 or kept the 13 percent for our administrative fee.

Q. So the 23 percent never got to North Carolina account at all?

A. No, they wanted a net only. They didn't want the gross.

Q. What about the $15 per employer?

A. We kept that, too.

Q. The account that was maintained by Group Programs, Inc., in south Louisiana, was it used for anything other than collecting and transmitting the net premiums?

A. Sure, it was used for our total operation.

Q. Let me next refer you to another master

* * *

[p. 70] beginning of the month, some groups may not pay or may decide to cancel. So we waited until the month was closed, and then made disbursements usually around the tenth or the fifteenth of the month following.

Q. Now, the money that was left in the account for that month under that example, I guess eight hundred seventy – eighty-seven thousand dollars for that month, what would happen to that money? What would it be used for?

A. We would use it for paying claims.

Q. Well, first commissions would be paid, wouldn't they?

A. Yes, well, commissions and fixed costs and, you know, the normal operating.

Q. Well, let's itemize the sorts of things that would have come out. Commissions, as I understand, would vary between 25 and 26 percent?

A. Right.

Q. And that would be done on the fifteenth of each month following the previous months?

A. Yes, yes, generally.

Q. And from the remainder of course would be paid the claims.

A. Right.

Q. What else would come out of that?

* * *

[p. 83] A. Yes, and he was an actuary. He was a senior actuary with Pilot Life for years.

Q. How did you come to retain his services?

A. Well, in early 19, – first of all, going back to June 1 of 1988, we always attempted to, even if we had purchased a specific and aggregate coverage for the trust, I continued the search to try to get a company to come in and fully insure it. And the market was tight for small group trusts, so I didn't have any luck in doing that.

But in early 1989, about in February or March of '89, I made contact with a small company headquartered in Texas called Navaho Life that was interested in funding the trust or making it a fully insured product.

I had agreed with them, we had a signed administrative agreement. I had all the forms printed. Mr. Dunlap had approved the forms. And that took from about March through about July or maybe August, when I received a letter from them saying that they had just had an audit by the insurance department, and the insurance department

didn't want them to expand their sales any further. So that the contract we had with them was no longer –

At that time they had their own actuary

* * *

[p. 202] A Well, indicated that Durham had pulled out of the state, that they were canceling – that policy was being canceled, that we could offer them a replacement through the program that we had set up with, you know, through United National specific and aggregate. And at that time we had a 20 percent rate increase on June 1 of '88.

And we lost, you know, some of the business. But some of the business stayed on even with that increase. Because I had increased the business 20 percent at that time, on June 1 of '88.

Q Increased the rates?

A The rates, rates, yes.

Q Across the board. Did attrition from that act, is that one of the things that led you to want to affiliate with CAN and Community Health Network, things like that?

A No CAN, if I recall and I don't have the exact date – I recall we started doing business with CAN in early '88. So CAN had been on board at that time.

Q But did you begin dealing with CAN after you found that Durham was going to terminate?

A We dealt with CAN before Durham terminated.

Q Before they notified that they were going

EXHIBIT
L-2

[LOGO]

Nashville, Tennessee 17244

Elizabeth C. Thompson
Vice President and Trust Officer

March 20, 1985

To Pat Huval [hand-written notation]

Mr. Gibbs Smith, CLU
Benefit Programs, Inc.
Nashville, TN 37215
[address crossed out]

Re: Group Programs, Inc. Insurance Trust

Dear Mr. Smith:

I am enclosing an executed copy of the Group Programs, Inc. Insurance Trust Agreement.

If you have any questions, please give me a call.

Sincerely,
/s/ Elizabeth C. Thompson
Elizabeth C. Thompson
Vice President and
Trust Officer

ECT:agm
Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
AT BATON ROUGE

DOUGLAS D. GREEN, Commissioner of Insurance for the State of Louisiana, Plaintiff,	)	Civil Action No. 91-208
v.	)	Section: A
GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE B. FLORES, THOMAS K. HUVAL, DALE F. HUVAL, and KATHRYN H. PONTIFF, Defendants.	)	Judge John V. Parker

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

AFFIDAVIT OF GIBBS SMITH

GIBBS SMITH, having been duly sworn, does depose and state that the following is based upon personal knowledge:

1. I am a resident of Nashville, Tennessee.

2. I am currently president of Benefit Programs, Inc.

3. In late 1984, I was introduced to Patrick Huval who told me that he was interested in setting up a multi-employer insurance plan trust.

4. After a telephone conversation with Mr. Huval who was in Louisiana, he traveled to Nashville in early 1985 to explore the possibility of setting up such a trust.

5. Mr. Huval visited my office and observed my operation in early 1985. He decided to get into the business of administering insurance trusts similar to the ones I handled.

6. Mr. Huval and I entered into a contract whereby I agreed to help him set up a multi-employer insurance plan trust.

7. I supplied Mr. Huval with all the forms necessary for setting up the Summit Insurance Plan Trust, including the form which is the basis of the Insurance Trust Agreement that was dated March 8, 1985.

8. I made the initial contacts with the Durham Life Insurance Company, which served from 1985 to 1988 as the insurer of the Summit Insurance Plan Trust, and Third National Bank in Nashville, which served as trustee of the Summit Insurance Plan Trust.

9. The contacts with Durham Life Insurance Company and Third National Bank in Nashville were based upon my previous dealings with them on similar trust arrangements.

10. Third National Bank did not solicit the business of Huval or the Summit Insurance Plan Trust. I made the initial contact with Third National Bank in Nashville to set up the trust arrangement.

11. At no time was I ever employed or acting as the agent of Third National Bank in Nashville, nor did I ever solicit business in Louisiana or otherwise transact any business in Louisiana on behalf of Third National Bank in Nashville.

FURTHER AFFIANT SAYETH NOT.

/s/ Gibbs Smith
GIBBS SMITH

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Personally appeared before me, Kathleen Patti Snow, a Notary Public of said County and State, GIBBS SMITH, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at Office, this 2nd day of March, 1991.

/s/ Kathleen Patti Snow
Notary Public

My Commission Expires: 7-23-94

[SEAL]

(2)

APR 13 1994
OFFICE OF THE CLERK

No. 93-1440

In The

Supreme Court of the United States

October Term, 1993

GROUP PROGRAMS, INC.; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.; THIRD NATIONAL BANK; LIBERTY MUTUAL INSURANCE COMPANY; PATRICK HUVAL; DIANNE B. FLORES; THOMAS K. HUVAL; DALE F. HUVAL and KATHRYN H. PONTIFF,

Petitioners,

vs.

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA,

Respondent.

On Petition for Writ of Certiorari to the Louisiana Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION

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5061
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

M21

QUESTIONS PRESENTED FOR REVIEW

1. Whether a nonresident trustee is subject to personal jurisdiction in Louisiana under circumstances where the trust was created to issue insurance coverage in Louisiana; was regulated by the Louisiana Commissioner of Insurance; maintained its assets in Louisiana; issued coverage to Louisiana citizens and Louisiana employers; and was administered in Louisiana by a Louisiana corporation acting by authority of the nonresident trustee.

2. Whether a nonresident trustee is subject to personal jurisdiction in Louisiana where the trustee entered into contractual arrangements authorizing a Louisiana insurance trust to issue insurance coverage to thousands of Louisiana residents without authority from the Louisiana Department of Insurance and where the trustee directly undertook (and then breached) contractual obligations in favor of the Louisiana beneficiaries and participants in the trust.

3. Whether the Commissioner of Insurance established a *prima facie* case for Louisiana's *in personam* jurisdiction over Third National Bank.

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TABLE OF CITATIONS

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Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) 7, 20

Guillbeau v. C & D Reprographics-Lafayette, Inc., 568 So. 2d 206 (La. App. Third Cir. 1990), *writ denied*, 571 So. 2d 653 21

Hanson v. Denckla, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 1283 (1958) 9, 24, 25, 26, 27, 28

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APPENDIX

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STATEMENT OF THE CASE

In 1985, Third National Bank voluntarily entered into an agreement that created the Summit Insurance Plan Trust. The Summit Insurance Plan Trust was established as a multiple employer trust to provide coverage to Louisiana citizens and was subject to regulation by the Louisiana Commissioner of Insurance. Under the terms of the trust agreement, Third National Bank was designated as Summit's trustee and Group Programs, Inc., as its grantor and administrator. The Summit Insurance Plan Trust operated exclusively in Louisiana from March 1985 until June 1988, and predominantly in Louisiana thereafter.[1] In 1989 alone, twenty million dollars ($20,000,000) worth of premiums were collected and processed in Louisiana.[2] The trust was administered in Louisiana and the accounting services for the trust were performed in Louisiana.[3] Third National Bank served as the sole trustee of the Summit Insurance Plan trust from the time it was created on March 8, 1985, until 1990 when it was placed in rehabilitation by the State of Louisiana.[4] From 1985 through 1990, Third National Bank issued invoices to Louisiana, and received payment from Louisiana banks for its annual fee for acting as trustee of the Summit Insurance Plan Trust.[5]

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1. *See* Exhibit 1, p. 100, the October 25, 1990, deposition of Patrick Huval (Exhibit Envelope 2).

2. *See* Exhibit 15 (Exhibit Envelope 2).

3. *See* Exhibit 21, paragraph 8; Exhibit 3; Exhibit 1, pp. 31, 57, 61, 65, 66, 86; Exhibit 11, pp. 59, 60 (Exhibit Envelope 2).

4. *See* Exhibit 8, deposition of Robert Mayer and Exhibit L-3 attached to Exhibit 1, the October 25, 1990, deposition of Patrick Huval (Exhibit Envelope 2).

5. Third National Bank invoiced Group Programs $500 annually for (Cont'd)

Under the trust agreement, Third National Bank, as trustee, had three (3) basic duties: (a) to obtain, through Group Programs, group insurance providing full life, health, accident and disability insurance coverage for the beneficiaries of the trust; (b) to hold and maintain the policy or policies in force; and, (c) to terminate the trust immediately in the event that any group master insurance policy or policies terminated, lapsed, or expired without being renewed unless the coverage was replaced immediately without any gaps in coverage. Any replacement policies were to be approved by Third National Bank in writing in advance.[6]

In March of 1985, pursuant to the terms of the trust agreement, Third National Bank, acting through Group Programs, applied to Durham Life Insurance Company of Raleigh, North Carolina for a policy providing coverage for Louisiana employers and participants in the Summit Insurance Plan Trust. The policy issued, and Durham Life and Group Programs executed a Master Administrative Agreement (the "1985 Master Administrative Agreement") whereby Group Programs agreed to administer Summit's health claims on Durham's behalf.[7] Group Programs' responsibility to Durham under the 1985 Master Administrative Agreement was to administer the Durham insurance policy issued

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(Cont'd)

acting as Trustee of the Summit Insurance Plan Trust, and Third National Bank annually received payment of the fee from Group Programs, Inc. *See* Exhibit 8, deposition of Robert Mayer, pp. 31-37 and Exhibit TNB #5 attached to the Mayer deposition. Exhibit 16, deposition of Patrick Huval, pp. 31-37. Exhibit 18 is a copy of Check No. 2765 in the amount of $500 payable to Third National Bank, issued out of Group Programs' offices in Louisiana, and drawn on a Louisiana bank. *See* Exhibit 17 (Exhibit Envelope 2).

6. *See* Appendix B (6a), Insurance Trust Agreement (Exhibit 2, Exhibit Envelope 2).

7. *See* Exhibit 3 (Exhibit Envelope 2).

to Summit in accordance with guidelines set by Durham. Durham paid Group Programs an administrative fee for these services.

From March 1985 through June, 1988, the Summit Insurance Plan Trust was fully insured by Durham Life Insurance Company. In the spring of 1988, Durham Life Insurance Company terminated the policy which it had provided to the Summit Insurance Plan Trust. At that point, Third National Bank, as trustee of the Summit Insurance Plan Trust, was under a duty to terminate the trust pursuant to the terms of the Insurance Trust Agreement. In contemplation of the loss of the Durham insurance coverage, rather than terminate the trust, Third National Bank and Group Programs executed a *new* Master Administrative Agreement to be effective June 1, 1988, the effective date of Durham's cancellation (the "1988 Master Administrative Agreement").[8] Under the 1988 Master Administrative Agreement, Group Programs administered the Summit Insurance Plan Trust *under direct authority from Third National Bank.* The 1988 Master Administrative Agreement, executed solely between Group Programs and Third National Bank, authorized the Summit Insurance Plan Trust to continue operating in Louisiana after June 1, 1988, even though Durham had terminated the only group policy which provided coverage for the trust. At this point, the Summit Insurance Plan Trust in effect became a self-insured trust operating exclusively in Louisiana without authority to conduct business in Louisiana as such.

Under the terms of the 1988 Master Administrative Agreement, Third National Bank undertook more onerous and substantial obligations concerning the Summit Insurance Trust than had previously been accepted under the 1985 Insurance Trust Agreement. Third National Bank also retained important supervisory responsibilities over Group Programs.

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8. *See* Appendix C (13a), 1988 Master Administrative Agreement (Exhibit 4, Exhibit Envelope 2).

The Master Administrative Agreement obligates Group Programs to conform its method of conducting business to the reasonable rules of the *trust*. The Agreement provides that premiums will be established by the *trust* according to the terms of the group policy; that charges and modifications made to insureds will be subject to the prior written approval of the *trust*; that Group Programs will not use policy forms, certificate forms, or administrative forms except for such forms as shall have been approved in writing by the *trust*; that the procedures for use of such forms shall be set forth in writing by the *trust*; and that books and records of Group Programs will be open for inspection by the *trust*.[9]

The Master Administrative Agreement states that Group Programs has no authority to receive any monies on behalf of the trust except in compliance with terms and conditions of receipts, policies, and contracts issued by the *trust*; and no authority to circulate advertising materials or pamphlets unless the same shall have been approved in writing by the *trust*.[10] Article II of the Agreement provides that no printing materials used in connection with administering the plan or soliciting insureds shall be used without the prior written consent of the *trust*; and that the form and content of all advertising with respect to the plans must be approved in advance in writing by the *trust*.[11]

Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized the trust to: issue policies to thousands of Louisiana residents and businesses; issue pamphlets and advertising materials to Louisiana residents and

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9. *Id.* Article I.2 (15a).

10. *Id.* (17a).

11. *Id.* Article II (16a).

businesses; and collect millions of dollars in premiums from Louisiana residents and businesses. In the Addendum to the 1988 Master Administrative Agreement, Third National Bank authorized the use of Louisiana citizens' premiums to pay millions of dollars in administrative fees to Group Programs. This administrative fee had previously been paid by Durham.[12]

Subsequent to 1988, Third National Bank received from Group Programs a copy of the Summit Insurance policy which described the coverage afforded to beneficiaries of the Summit Insurance Plan Trust. This master policy was held by Third National Bank and stated on the certificate page of the policy that the policy was to be delivered in and governed by the laws of Louisiana.[13] Subsequent to 1988, Third National Bank executed and approved an amendment to this policy which stated on its face that it was to be delivered in Louisiana.[14] Third National Bank also corresponded by mail with representatives of Group Programs in Louisiana on issues relating to the Summit Insurance Plan Trust.[15]

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12. *See* Appendix C (23a), Addendum to Master Administrative Agreement. The Addendum clearly specifies the Summit Insurance Plan Trust as the group insurance plan which Third National Bank and Group Programs, Inc. were interested in marketing. In the Addendum, Third National Bank, as trustee, authorizes Group Programs, Inc. to receive a 13% administrative fee, administer the trust and collect premiums. *See also,* Exhibit 1, p. 24, deposition of Patrick Huval dated October 25, 1990 and Exhibit 4 (Exhibit Envelope 2).

13. *See* Appendix D (25a), Certificate of Insurance for Summit Insurance Plan (Exhibit L-6, attached to Exhibit 1, Exhibit Envelope 2).

14. *See* Appendix E (27a), Amendment to Summit Insurance Plan (Exhibit 1 and attached document L-6, Exhibit Envelope 2). The amendment effective April 1, 1989, was approved by Third National Bank on March 30, 1989.

15. Third National Bank forwarded an August 11, 1989, letter to Patrick Huval informing him that the annual fee for this type of account was being

(Cont'd)

The responsibilities undertaken by Third National Bank by virtue of the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement which were owed to individuals and entities in Louisiana were neither ministerial nor trivial responsibilities. Further, the direct action taken by Third National Bank in executing the 1988 Master Administrative Agreement whereby Third National Bank authorized operation of the Summit Insurance Plan Trust without insurance coverage violated its affirmative duty under the Trust Agreement to terminate the trust if it was not fully funded.

The breach of these responsibilities, as well as the purposeful actions taken by Third National Bank which were directed at Louisiana citizens, subjects Third National Bank to personal jurisdiction in Louisiana

SUMMARY OF THE ARGUMENT

1. Third National Bank portrays its status as trustee of the Summit Insurance Plan Trust as a *de minimis* role that required Third National Bank merely to obtain and hold a policy or policies of group insurance. However, the Insurance Trust Agreement also obligated Third National Bank to *terminate* the trust in the event that there was a lapse in the policy or policies providing insurance coverage to the trust. Third National Bank acknowledges that the only policy that ever fully funded the trust was canceled effective June 1, 1988, yet the trust was not terminated. Failure to terminate the trust at this point was a breach of Third National Bank's affirmative duties under the Insurance Trust Agreement. If Third

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changed. Robert Mayer, vice-president of Third National Bank, also received a January 4, 1990, letter of correspondence from Patrick Huval. *See* Exhibit 8, Exhibit TNB 9B, both attached to Exhibit 8, deposition of Robert Mayer. *See also,* Exhibit L-6 attached to Exhibit 1, deposition of Patrick Huval dated October 25, 1990 (Exhibit Envelope 2).

National Bank had terminated the Summit Insurance Plan Trust when its insurance coverage was canceled, Louisiana insureds would not have been left with millions of dollars of uninsured losses. Third National Bank's duties under the Insurance Trust Agreement were neither ministerial nor trivial responsibilities. The breach of responsibilities which were undertaken for the benefit of Louisiana citizens subjects Third National Bank to personal jurisdiction in Louisiana.

2. Third National Bank failed to mention in its writ application, its execution of the 1988 Administrative Agreement whereby Third National Bank undertook more onerous and substantial obligations concerning the Summit Insurance Plan Trust than had previously been accepted under the Insurance Trust Agreement. Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized Group Programs to continue to solicit Louisiana employers and employees to purchase "coverage" through the Summit Insurance Plan Trust despite the fact that Summit's insurance coverage had been canceled. In the Addendum to the 1988 Master Administrative Agreement, Third National Bank also authorized the use of Louisiana citizens' premiums to pay for the continued solicitation, marketing and administration of the Summit Insurance Plan Trust in Louisiana. By executing the 1988 Master Administrative Agreement, Third National Bank undertook responsibilities which were owed to individuals and entities in Louisiana. The breach of these responsibilities subjects Third National Bank to personal jurisdiction in Louisiana.

3. The test for the fairness of asserting *in personam* jurisdiction over a non-resident does not turn on actual knowledge, but whether Third National Bank *could* reasonably anticipate that its conduct was such that it may be haled into court in the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The present action arises out of

contracts executed by Third National Bank with a Louisiana corporation in which Third National Bank assumed fiduciary duties as trustee of an insurer domiciled in the State of Louisiana. If Third National Bank did not have actual knowledge that the Summit Insurance Plan Trust was conducting business in Louisiana, then it certainly should have known. The Insurance Trust Agreement provided for such conduct. The Grantor and Administrator of the trust were domiciled in Louisiana. The trust's assets were located in Louisiana. All correspondence sent by Third National Bank was mailed to Louisiana. The trust sent invoices and executed contracts to Louisiana, received payment by checks drawn on a Louisiana bank for its trustee fee, and the group policy which Third National Bank held as trustee of the Summit Insurance Plan Trust stated on the certificate that the policy was to be delivered in and governed by the laws of Louisiana. The Summit Insurance Plan Trust operated exclusively in Louisiana from 1985 to 1988, and primarily in Louisiana thereafter. If a trustee undertakes fiduciary obligations to the beneficiaries of a Louisiana-domiciled insurance trust of the quality and nature of those contained in the Insurance Trust Agreement and the Master Administrative Agreement, then the trustee should reasonably anticipate being "haled into" court in Louisiana for the damages resulting from the trustee's breaches. Accordingly, Louisiana's assertion of jurisdiction over Third National Bank is fair.

4. Inherent in Third National Bank's duty to terminate the Summit Insurance Plan Trust upon lapse or termination of the group insurance policy is the duty to know whether and when such coverage lapses. There were annual anniversary dates for the group policy upon which the policy could be terminated. This provision was contained in the policy which Third National Bank possessed. The policy was terminated effective June 1, 1988, one of these anniversary dates, yet the Bank never checked to see whether the policy was still in force. Whether Third National Bank had actual knowledge of the cancellation of the master policy is

irrelevant. It had a duty to acquire such knowledge and failed in this respect. Further, because Third National Bank authorized continued operation of the trust and failed in its affirmative duty to terminate the trust when the insurance coverage ceased, Louisiana citizens have incurred millions of dollars of uninsured losses. Third National Bank's breach of its affirmative duties set forth above subjects Third National Bank to jurisdiction in Louisiana.

5. The First Circuit Court of Appeal's decision does not conflict with *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 1283 (1958). Unlike the trust involved in *Hanson*, the Summit Insurance Plan Trust at all times maintained extremely close ties with the State of Louisiana. Summit's assets were held and administered in Louisiana. The State of Louisiana exercised regulatory authority over the Summit Insurance Plan Trust. Third National Bank directly authorized continued operation of the trust in Louisiana without proper funding or regulatory authority through execution of the 1988 Master Administrative Agreement. Third National Bank directly authorized an amendment to the very insurance policy which was being sold to Louisiana citizens. Third National Bank also authorized the use of Louisiana citizens' premiums to pay millions of dollars in administrative fees. Summit's close relation to and regulation by the State of Louisiana, as well as the direct actions of Third National Bank aimed at Louisiana beneficiaries stand in sharp contrast to the circumstances of *Hanson* and compel the assertion of personal jurisdiction rather than denial.

REASONS FOR DENYING THE WRIT

I. MINIMUM CONTACTS

A. THIRD NATIONAL BANK HELD A CRITICAL ROLE AS TRUSTEE OF A LOUISIANA INSURANCE TRUST EVEN BEFORE EXECUTION OF THE 1988 MASTER ADMINISTRATIVE AGREEMENT.

Third National Bank portrays its status as trustee of the Summit Insurance Plan Trust as a *de minimis* role that required Third National Bank merely to obtain and hold a policy or policies of group insurance. To the contrary, Third National Bank's position as trustee was fundamental to the creation and continued existence of the Summit Insurance Plan Trust. First, the requirement that Third National Bank obtain and maintain in effect a policy or policies of insurance providing full coverage to beneficiaries of the Summit Insurance Plan Trust was indispensable to the very concept of the trust. Further, the Insurance Trust Agreement required Third National Bank to immediately terminate the trust in the event that there was a lapse in the policy or policies providing such coverage. Indeed, the failure to maintain insurance coverage and the failure to terminate the trust when the insurance coverage lapsed goes to the heart of the action asserted against Third National Bank.

The Insurance Trust Agreement required Third National Bank, acting through Group Programs, Inc., to make application to an insurance company:

> . . . for the issuance of a policy or policies of group insurance, which term shall include, but not be limited to, all forms of group or franchise life, health, accident, and disability

> insurance to be issued *to the Trustee* . . .(emphasis added).[16]

The agreement further obligated Third National Bank to "hold such policy or policies of group insurance . . . for the purpose of obtaining and *maintaining* the policy or policies *in force* . . . (emphasis added)."[17]

Not only did the Insurance Trust Agreement obligate Third National Bank to maintain in effect a group master insurance policy, that agreement also obligated Third National Bank to *terminate* the trust if the insurance coverage terminated, expired, lapsed or was canceled for any reason. The Insurance Trust Agreement required Third National Bank to review any proposed substitute or successor insurance company and approve the successor insurance company "in writing in advance." If such fully insured coverage through an approved successor company could not be obtained "without any gaps in coverage," then Third National Bank was obligated to immediately terminate the Summit Insurance Plan Trust.[18]

According to the terms of the Insurance Trust Agreement, Third National Bank was under a fiduciary duty to *maintain* a group master insurance policy in force, providing full coverage to the beneficiaries of the trust or to *terminate* the trust if full coverage could not be maintained. The Durham policy was

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16. *See* Appendix B (6a), Insurance Trust Agreement, section 3 (Exhibit 2, Exhibit Envelope 2).

17. *See* Appendix B (7a), Insurance Trust Agreement, section 3(b) (Exhibit 2, Exhibit Envelope 2).

18. *See* Appendix B (9a), Insurance Trust Agreement, section 7B (Exhibit 2, Exhibit Envelope 2).

canceled effective June 1, 1988. There was no replacement coverage. Third National Bank failed to terminate the trust. Instead, Third National Bank authorized continued operation of the trust as a self-insured trust without regulatory authority or proper funding. The continued operation of the Summit Insurance Plan Trust subsequent to June 1, 1988, was a continuing breach of fiduciary duty which resulted in millions of dollars of losses to thousands of Louisiana citizens.[19]

Third National Bank maintains that its obligations to obtain and maintain full insurance coverage for the trust (or terminate the trust if such coverage lapsed) were "ministerial" duties. Regardless of how Third National Bank tries to minimize its duties, the fact is that the breach of its obligations to obtain and maintain insurance coverage (or terminate the trust) resulted in millions of dollars of losses to thousands of Louisiana residents. This suit arises out of Third National Bank's breach of these critical fiduciary duties which Third National Bank owed to Louisiana employee and employer members of the Summit Insurance Plan Trust.

B. THIRD NATIONAL BANK ENABLED AND AUTHORIZED THE SUMMIT INSURANCE PLAN TRUST TO OPERATE IN LOUISIANA SUBSEQUENT TO JUNE 1, 1988, WITHOUT PROPER FUNDING OR REGULATORY AUTHORITY.

Third National Bank failed to mention in its writ application, its execution of the 1988 Master Administrative Agreement

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19. As of April 15, 1991, the claims filed against Summit Insurance Plan Trust totalled not less than $7,544,640.28. *See* Exhibit 29, affidavit of Sarah Bridendall; Exhibit 12, affidavit of Caroline Brock. There are not less than 4,150 claimants who have unpaid health claims, of which not less than 3,075 claimants were Louisiana residents. *See* Exhibit 12 (Exhibit Envelope 2).

whereby Third National Bank undertook more onerous and substantial obligations concerning the Summit Insurance Plan Trust.[20] In the 1988 Master Administrative Agreement, Third National Bank explicitly grants broad authority to Group Programs and retains important supervisory responsibilities. Third National Bank's execution of the Master Administrative Agreement enabled Group Programs to continue operating the Summit Insurance Plan Trust after the only insurance policy that had funded the trust was canceled. In the Agreement, the Summit Insurance Plan Trust is referred to interchangeably as the "trust" and "the Company". The individual signing the Administrative Agreement for Third National Bank in its capacity as Trustee of the Summit Insurance Plan Trust was Marjorie Kirkpatrick, a long-time employee of Third National Bank.[21]

The Master Administrative Agreement obligates Group Programs to conform its method of conducting business to the reasonable rules of the *trust*. The Agreement provides that premiums will be established by the *trust* according to the terms of the group policy; that charges and modifications made to insureds will be subject to the prior written approval of the *trust*; that Group Programs will not use policy forms, certificate forms, or administrative forms except for such forms as shall have been approved in writing by the *trust*; that the procedures for use of such forms shall be set forth in writing by the *trust*; and that books and records of Group Programs will be open for inspection by the *trust*.[22]

According to Article III of the Master Administrative Agreement, the *trust* was to set the underwriting standards for

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20. *See* Appendix C (13a), the 1988 Master Administrative Agreement (Exhibit 4, Exhibit Envelope 2).

21. *Id.* (22a).

22. *Id.* Article I.2 (15a).

issuing coverage to insureds. The *trust* was to direct the transmittal of premium notices, lapse notices, and application forms to insureds. The *trust's* approval was required on all claim forms and claim materials being provided to the trust's insureds. No assignment, transfer, or disposal of the commissions, administration, or other fees by Group Programs could be made at any time without written approval of the *trust*. Further, the duties of Group Programs could not be delineated to any person without prior written consent of the *trust*.[23]

The Master Administrative Agreement provides that: the *trust* shall be notified of claims against Group Programs; the *trust* shall have a right to defend such claims in its own name; and the *trust* shall at all times have the right to settle such claims. The Agreement further provides that the *trust* shall have access to all ledgers, records, account files, and other documents generated by Group Programs.[24]

The Master Administrative Agreement states that Group Programs has no authority to receive any monies on behalf of the trust except in compliance with terms and conditions of receipts, policies, and contracts issued by the *trust*; and no authority to circulate advertising materials or pamphlets unless the same shall have been approved in writing by the *trust*.[25] Article II of the Agreement provides that no printing materials used in connection with administering the plan or soliciting insureds shall be used without the prior written consent of the *trust*, and the form and content of all advertising with respect to the plans must be approved in advance in writing by the *trust*.[26]

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23. *Id.* Article III (18a).

24. *Id.* Article I.1.(d) (14a).

25. *Id.* Article I.2(g) (17a).

26. *Id.* Article II (17a).

Third National Bank acknowledges that the Durham Life Insurance policy terminated as of May, 1988, yet the trust was not terminated. (Applicant's Brief, p. 6). Third National Bank, instead, executed the 1988 Master Administrative Agreement which authorized continued operation of Summit as a self-insured trust without proper funding or regulatory authority.

Third National Bank voluntarily executed the 1988 Master Administrative Agreement. Third National Bank maintains that it did not actually exercise most of its rights and obligations under that agreement. By executing the 1988 Master Administrative Agreement, however, Third National Bank undertook fiduciary responsibilities for the benefit of the insureds and beneficiaries of the Summit Insurance Plan Trust, which were neither ministerial nor trivial. The breach of these duties undertaken for the benefit of Louisiana citizens, subjects Third National Bank to personal jurisdiction in Louisiana.

C. THIRD NATIONAL BANK DIRECTED ACTIONS AT LOUISIANA BY AUTHORIZING PAYMENT OF MILLIONS OF DOLLARS IN ADMINISTRATIVE FEES FROM A LOUISIANA DOMICILED INSURANCE TRUST AND BY AUTHORIZING AMENDMENTS TO THE LOUISIANA INSURANCE POLICIES BEING SOLD TO LOUISIANA CITIZENS.

In addition to its central role as trustee of the Summit Insurance Plan Trust, and in addition to the critical obligations undertaken by Third National Bank in the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement, Third National Bank took specific actions in its capacity as trustee, which were directed at Louisiana citizens. These actions taken directly by Third National Bank (exclusive of any actions taken by Group Programs) form yet an additional basis for exercising personal jurisdiction.

The group insurance policy for the benefit of employers and others participating in the Summit Insurance Plan Trust was issued to Third National Bank and was physically held by Third National Bank.[27] The policy provided coverage to thousands of Louisiana residents who incurred medical expenses with Louisiana medical providers.[28] Third National Bank issued invoices to Louisiana, and received payments from Louisiana for its annual fee for acting as trustee of the Summit Insurance Plan Trust from 1985 through 1990.[29] Third National Bank received a copy of the Summit Insurance Plan which described the coverage afforded to beneficiaries of the Summit Insurance Plan Trust, and maintained control of this document and other related documents received from Group Programs.[30] The Summit Insurance policy held by Third National Bank states on the certificate page that the policy is to be delivered in and governed by the laws of Louisiana.[31] Subsequent to May of 1988, Third National Bank executed and approved an Amendment to the Summit insurance policy.[32] This

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27. Third National Bank received a copy of the Summit Insurance Trust Plan No. 3174 from Group Programs, Inc. which plan was forwarded by employees of Group Programs, Inc. to Third National Bank, as trustee of Summit Insurance Plan Trust. Third National Bank also received a copy of the Group Insurance Plan No. 3174 issued by the Summit Insurance Plan Trust and maintained this document in its vault. *See* Plaintiff's Exhibit 8, Robert Mayer deposition, pp. 37-40; and documents TNB 51, TNB 6, TNB 7 attached to Mayer deposition (Exhibit Envelope 2).

28. *See* footnote 19.

29. *See* footnote 5.

30. *See* footnote 27.

31. *See* footnote 13; *see also*, footnote 27.

32. *See* footnote 14; *see also*, footnote 27.

was aimed directly at Louisiana citizens because it altered the very policy that was being sold and delivered in Louisiana. Third National Bank directly corresponded with representatives of Group Programs in Louisiana on issues relating to the Summit Insurance Plan Trust.[33]

Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized the trust to: issue policies to thousands of Louisiana residents and businesses; issue pamphlets and advertising materials to Louisiana residents and business; and collect millions of dollars in premiums from Louisiana residents and businesses. In the Addendum to the 1988 Master Administrative Agreement, Third National Bank authorized the use of Louisiana citizens' premiums to pay millions of dollars in administrative fees to Group Programs for the continued marketing of the Summit Insurance Plan Trust in Louisiana.[34]

The fiduciary duties undertaken by Third National Bank by virtue of the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement were owed to individuals and entities located and domiciled in Louisiana. The breach of these duties, as well as the purposeful actions taken by Third National Bank which were directed at Louisiana citizens, subjects Third National Bank to personal jurisdiction in Louisiana.

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33. *See* footnote 15.

34. *See* footnote 12.

II. FAIR PLAY AND SUBSTANTIAL JUSTICE

A. THIRD NATIONAL BANK KNEW OR SHOULD HAVE KNOWN THAT THE SUMMIT INSURANCE PLAN TRUST WAS BEING MARKETED IN LOUISIANA.

At the time that Third National Bank and Group Programs entered into the Trust Agreement which established the Summit Insurance Plan Trust, Group Programs, the Grantor and Administrator of Summit, was a Louisiana corporation that maintained its principal place of business in Louisiana. Patrick Huval, the incorporator, majority shareholder, a director, vice president and chief executive officer of Group Programs, was domiciled in Louisiana.[35] Third National Bank was a compensated trustee for Summit. Every year it submitted an invoice to the trust in Louisiana and every year Third National Bank received payment in the form of a check drawn on a bank in Louisiana.[36] The Trust Agreement required that Third National Bank, acting through Group Programs, procure a group master policy to fund the insurance trust to an insurance company "authorized to conduct the business of insurance in the State of Tennessee, *and other states in which Participating Employers are located* . . . (emphasis added)".[37] It was clear from the very terms of the instrument that created the trust (to which instrument Third National was a party) that Summit would offer insurance to employers in "other states."

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35. *See* Exhibit 16, January 24, 1991 deposition of Patrick Huval, p. 5. *See also*, Exhibit 21, paragraph 3; Exhibit 5 (Exhibit Envelope 2).

36. *See* footnote 5.

37. *See* Appendix B (17a), Insurance Trust Agreement, page 1 clause 3.A. (Exhibit 2, Exhibit Envelope 2).

The Summit Insurance Plan Trust was extremely active in the State of Louisiana. From 1985 until 1988, Summit operated *exclusively* in Louisiana, and primarily in Louisiana thereafter. Summit's assets were physically located in Louisiana.[38] The Summit Trust was the vehicle by which millions of dollars in insurance premiums were collected from Louisiana residents. Claims against all insurance policies sold by Summit were reviewed and processed in Louisiana, and the trust was subject to regulation by the Louisiana Commissioner of Insurance.[39] The group policy entitled "The Summit Insurance Plan," which Third National held as trustee stated on the certificate that "[t]his policy

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38. *See* Exhibits 9 and 10; Exhibit 9, Interrogatory No. 20 propounded by the Commissioner of Insurance asked Huval and Group Programs, Inc. to identify accounts maintained by Summit Insurance Plan. In response (Exhibit 10), Huval and Group Programs, Inc. identified three separate accounts, all maintained at Farmers & Merchants Bank & Trust Company in Breaux Bridge, Louisiana. Premiums received by Summit Insurance Plan Trust were deposited into those accounts. *See also,* Exhibit 11, Flores' deposition, pp. 59-60, 68; Exhibit 16, Patrick Huval January 24, 1991, deposition at pp. 31-37. These bank accounts and monies received into those accounts were clearly identified as assets of the Summit Insurance Plan Trust. Dianne Flores, the president, manager, and a shareholder in Group Programs, Inc., was responsible for supervising the claims processing and claims payments for employees and beneficiaries insured by the Summit Insurance Plan Trust. Excerpts from her deposition were attached as Exhibit 11. Ms. Flores testified that premiums received from employer/employee participants of the Summit Insurance Plan Trust prior to June 1, 1988, were deposited at Farmers and Merchants Bank in Breaux Bridge, Louisiana (Exhibit Envelope 2).

39. *See* Exhibit 11, Flores' deposition, pp. 59-60, 68; Exhibit 16, January 24, 1991 deposition, pp. 31-37. Dianne Flores, the president, manager, and a shareholder of Group Programs, Inc., was responsible for supervising the claims processing and claims payments for employees and beneficiaries insured by the Summit Insurance Plan Trust. Excerpts from her deposition were attached as Exhibit 11. *See also,* Exhibit 11, pp. 31, 46, 47, 59-62, 65-79, 85-86 (Exhibit Envelope 2).

is *delivered in and is governed by the laws of Louisiana* (emphasis added)." Third National approved and executed an amendment to this policy in March of 1989.[40]

It should have been apparent to Third National Bank at this point that Summit could and would be doing business in Louisiana as the terms of the Insurance Trust Agreement provided that the trust would solicit participants in other states, the grantor and administrator of the trust was domiciled in Louisiana, Third National was sending invoices and executed contracts to Louisiana, and was being paid its fee on checks drawn on a bank in Louisiana. The test for fairness does not turn on actual knowledge, but whether Third National *could* reasonably anticipate that its conduct was such that it may be haled into court in the forum state. *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490, 501 (1980).

If Third National Bank did not have actual knowledge that Summit was conducting business in Louisiana, then it certainly should have known. Knowledge of Summit's activity should be imposed by virtue of the quality and nature of Third National Bank's contractual and legal obligations under the 1985 Insurance Trust Agreement and the 1988 Master Administrative Agreement. Further, such knowledge should be imposed by virtue of the aforementioned evidence which should have alerted Third National Bank to the fact that Summit was conducting business *solely* in Louisiana until 1988 and primarily in Louisiana thereafter.[41]

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40. *See* footnote 13; *see also*, footnote 14.

41. *See* footnote 1.

The trial court did not pass on the question of whether Third National had or should have had knowledge of the Summit policies sold in Louisiana. As can be seen from the above cited evidence in the record, the Commissioner of Insurance demonstrated that Third National Bank had very substantial ties and contacts with the State of Louisiana such that Third National Bank knew or should have known of Summit's activity in Louisiana. The First Circuit Court of Appeal has review of both questions of law and fact. A factual determination made by the appellate court which was not made by the trial court is proper judicial procedure as long as there exists evidence in the record upon which the appellate court can base its finding. *Guillbeau v. C&D Reprographics-Lafayette, Inc.*, 568 So. 2d 206 (La. App. Third Cir. 1990), *writ denied*, 571 So. 2d 653. Accordingly, the appellate court determined from the evidence in the record that Third National did have knowledge of Summit's marketing of insurance policies in Louisiana.[42]

The present action is brought by the Louisiana Commissioner of Insurance, as Liquidator of the Summit Insurance Plan Trust, to recover damage caused to Louisiana citizens due to Third National Bank's negligence and breach of fiduciary duty to provide a solvent and fully insured health plan for Louisiana employee and employer members of the Summit Insurance Plan Trust. If a trustee undertakes fiduciary obligations to the beneficiaries of a Louisiana-domiciled insurance trust of the quality and nature of those listed above, then the trustee should reasonably anticipate being "haled into" court in Louisiana for the damages suffered by those beneficiaries as a result of the trustee's breaches. Third National Bank's contacts or relationship with the State of Louisiana were a foreseeable result of Third National Bank's purposeful conduct directed at Louisiana residents.

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42. *See* Appendix A (4a), Appellate Decision.

B. THIRD NATIONAL BANK KNEW OR SHOULD HAVE KNOWN THAT THE DURHAM LIFE INSURANCE GROUP POLICY HAD BEEN CANCELED.

The trial court stated that Third National Bank "was not notified of Durham's termination of the master policy," apparently suggesting that the bank would not be liable for failing to "discover" that the policies it was holding and had a duty to maintain had expired.[43] Although Third National Bank claims that its duties under the Insurance Trust Agreement were extremely limited, the bank does not deny that it had an obligation to maintain the policy itself. No matter how limited an interpretation is given to its duties under the Insurance Trust Agreement, Third National Bank must have had an obligation to know whether the policy it had a duty to maintain had been canceled. Further, inherent in the duty to terminate the trust upon lapse or termination of the group insurance policy is the duty to know whether and when such policy lapses. There were annual anniversary dates for the policy upon which the policy could be terminated. This provision was contained in the policy which Third National Bank had in its possession. The policy was terminated effective June 1, 1988, one of these anniversary dates, yet the Bank never checked to see whether the policy was still in force.[44]

When Third National Bank executed the 1988 Master Administrative Agreement authorizing the continued operation of the trust, it should have been fully aware that the trust would be maintained without the required insurance coverage due to the very terms of the agreement it was executing and the duties it was

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43. *See* Trial Court's Written Reasons for Judgment, p. 2 (Rec. unenumerated – *see* Vol. 3 of 4).

44. *See* Exhibit 1, pp. 19, 26, 27, the October 25, 1990 deposition of Patrick Huval (Exhibit Envelope 2).

authorizing Group Programs to perform. After Durham Life ceased providing coverage for Summit, only two parties remained, Third National Bank and Group Programs. Durham Life Insurance Company had absolutely no role after June 1, 1988. It did not provide insurance, and it did not authorize or direct Group Programs to continue operating or administering the insurance coverage provided under the Summit Insurance Plan.[45] However, Third National *did* authorize the continued operation of the Summit Insurance Plan Trust and the payment to Group Programs of a 13% administrative fee from Louisiana citizens' insurance premiums.[46]

The preamble to the 1988 Master Administrative Agreement states that Third National Bank and Group Programs, Inc. are "desirous of entering into an Agreement reflecting certain rights and *obligations of the parties* with respect to the *marketing* and *administration* of group insurance plans, including those indicated in the *attached Addenda* and those which may be hereafter attached" (emphasis added). The group insurance plan indicated in the addendum was the "Summit Insurance Plan Trust." There was no policy of insurance (*i.e.*, such as the Durham Life Insurance Company policy identified in the previous agreement) referenced in the attached addendum.[47] Accordingly, Third National Bank should have known that it was authorizing the trust to continue as a self-funded insurance trust.

Even if Third National Bank did not have actual knowledge of Durham's cancellation of the only policy funding the Summit Insurance Plan Trust, it had a duty to acquire such knowledge.

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45. *Id.*

46. *See* footnote 12.

47. *See* footnote 27.

Inherent in its duty to terminate the trust upon lapse or cancellation of the group policy is the duty to know whether and when such policy lapses. Third National Bank failed in this respect. Because Third National Bank authorized continued operation of the trust and failed in its affirmative duty to terminate the trust when its insurance coverage lapsed, Louisiana citizens have incurred millions of dollars of uninsured losses.[48]

III. HANSON IS DISTINGUISHABLE IN THAT THE SUMMIT INSURANCE PLAN TRUST AT ALL TIMES MAINTAINED EXTREMELY CLOSE TIES WITH THE STATE OF LOUISIANA.

Third National Bank argues that the case of *Hanson v. Denkla,* 357 U.S. 235, 78 S. Ct. 1228 L. Ed. 2d 1283 (1958), is factually similar to the present case and compels a finding of no personal jurisdiction. *Hanson* ruled that a Florida court lacked personal jurisdiction over a Delaware company acting as trustee of a trust fund. In reaching its decision, the Supreme Court specifically noted that (1) none of the trust's assets had ever been held or administered in Florida, 78 S. Ct. at 1238; (2) the settlor was not domiciled in the forum state at the time the trust was formed, 78 S. Ct. at 1239; and (3) the relationship with the forum state only began years after the trust was formed, when the settlor unilaterally moved to the forum state. *Id.* These facts were noted and expressly relied upon by the court in denying jurisdiction. None of these critical findings are present in this case. Summit's assets *were* in Louisiana. Summit received millions of premium dollars into separate bank accounts held in its name at the Farmers and Merchants Bank in Breaux Bridge, Louisiana.[49] Evidence adduced in the district court reveals, for example, that Summit deposited

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48. *See* footnote 19.

49. *See* footnote 38.

$20,417,259.31 into Louisiana bank accounts in 1989 alone.[50] The individuals authorized to issue checks on the accounts were Louisiana residents. These accounts were maintained from the time the Summit Insurance Plan Trust was created in 1985 until its liquidation in 1990. Also, the grantor, Group Programs, was *always* a Louisiana domiciliary.[51]

In denying jurisdiction, the *Hanson* Court also distinguished the facts of *Hanson* from those of *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223. In *McGee*, the Supreme Court found that California had personal jurisdiction over a nonresident defendant who solicited a reinsurance agreement with a resident of California. The *Hanson* Court expressly noted that no instances were disclosed in the *Hanson* record where the trustee performed any acts directed at Florida which bore the same relationship to the *Hanson* trust agreement as the solicitation of the insurance contract in *McGee*. *Hanson*, 78 S. Ct. at 1239. Again, in the instant case, this critical finding is not present. To the contrary, the actions of Third National Bank in executing the 1988 Master Administrative Agreement, the Addendum thereto, and the amendment to the Louisiana policy offered by Summit, bears the same relationship to the Summit Insurance Plan Trust as the solicitation of the insurance contract in *McGee*. Through its execution of the 1988 Master Administrative Agreement, Third National Bank authorized continued solicitation and marketing of Summit insurance policies to Louisiana citizens. Third National Bank also authorized the use of Louisiana citizens' premiums to pay for this continued marketing of Summit in Louisiana.

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50. Exhibit 15 sets forth that the Summit Insurance Plan Trust received $20,326,020.92 in premiums in 1989 alone. This amount does not include $82,777 in premiums received from Tangipahoa Parish by the Summit Insurance Plan Trust during that year (Exhibit Envelope 2).

51. *See* footnote 35.

Unlike the trust involved in *Hanson,* the Summit Insurance Plan Trust at all times maintained extremely close ties with the State of Louisiana. The *Hanson* trustee did not hold a group master insurance policy which stated that the insurance policy would be delivered in and subject to the laws of Florida. The *Hanson* trustee did not expressly authorize amendments to the very product which was being sold to thousands of Florida citizens. The *Hanson* trust did not, of course, provide insurance coverage to Florida citizens. The *Hanson* trust obviously was not placed in rehabilitation or liquidation by the State of Florida. The *Hanson* trust was not administered by a Florida corporation in Florida under the direct authority of the trustee. The *Hanson* trust did not hold and maintain assets in Florida, review insurance claims of Florida residents or play claims from a Florida bank account. The *Hanson* trustee did not enter into multiple contracts with a Florida corporation to administer the assets of the trust in Florida.

Finally, in *Hanson,* the fact that Florida had not enacted special legislation concerning regulation of the trust at issue was specifically noted and relied upon in finding that Florida did not have personal jurisdiction over the trust's nonresident trustee. *Hanson,* 78 S. Ct. at 1239. In the present case, the Summit Insurance Plan Trust was a multiple employer insurance trust which is subject to close regulation by the Louisiana Commissioner of Insurance. LSA R.S. 22:3001-3002. The State of Louisiana has a significant interest in regulating the business of insurance within its borders.[52] In fact, the Summit trust was ultimately placed in liquidation by the State of Louisiana. The Commissioner of Insurance is bringing this suit on behalf of the more than 3,075 Louisiana residents whose medical claims totalling more than seven million dollars ($7,000,000) remain unpaid because Third National Bank authorized continued operation of the trust and failed in its affirmative duty to terminate

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52. *See, e.g.,* McCarran-Ferguson Act, 15 U.S.C. § 1012.

the trust when its coverage ceased. These facts stand in stark contrast to the facts of *Hanson,* and compel the assertion of personal jurisdiction rather than denial.

CONCLUSION

The trial court erred in finding that Third National Bank did not have contacts with the State of Louisiana to support the exercise of personal jurisdiction. Third National Bank maintained a substantial relationship with Louisiana and owed substantial duties to the Louisiana citizens and businesses who were participants in the Summit Insurance Plan Trust. The trust was created upon Third National Bank's execution of the 1985 Insurance Trust Agreement. Third National Bank was obligated to obtain and maintain a group master policy which would provide fully insured coverage to the Louisiana citizens and businesses who were beneficiaries of the Summit Insurance Plan Trust.

Third National Bank was obligated to terminate the Summit Insurance Plan Trust if the fully insured coverage terminated, expired, lapsed or was canceled for any reason. This duty was owed by Third National Bank to the Louisiana beneficiaries of the Summit Insurance Plan Trust. It is uncontested that no replacement policy was obtained when the Durham Life Insurance Policy lapsed as of March 31, 1988. As a result, millions of dollars in claims have been incurred by thousands of Louisiana residents and have not been paid. If Third National Bank had terminated the Summit Insurance Plan Trust when its insurance coverage was canceled, these Louisiana insureds would not have been left without insurance coverage.

Marjorie Kirkpatrick, the trust officer with Third National Bank who was in charge of the Summit Insurance Plan Trust file, executed the 1988 Master Administrative Agreement which authorized Group Programs to continue to solicit Louisiana

employers and employees to purchase insurance through the Summit Insurance Plan Trust, despite the fact that Summit was without coverage. The express purpose of the 1988 Master Administrative Agreement was for the "marketing and administration" of the Summit Insurance Plan Trust. Third National Bank received and reviewed plan documents describing and amending the coverages issued by the Summit Insurance Plan Trust to Louisiana citizens.

The Commissioner of Insurance has demonstrated that Third National Bank's relationship to Louisiana was a foreseeable result of its purposeful conduct and of the legal obligations which arose therefrom. The Commissioner of Insurance has demonstrated that Third National Bank has established substantial contacts with Louisiana. The Appellate Court's reversal of the ruling granting Third National Bank's exception of personal jurisdiction was proper.

The appellate court's decision does not conflict with *Hanson* because unlike the trust involved in that case, the Summit Insurance Plan Trust at all times maintained extremely close ties with the State of Louisiana. Summit's assets were held and administered in Louisiana. Louisiana's Department of Insurance exercised regulatory authority over Summit. Third National Bank authorized continued operation of the trust as a self-insurer through execution of the 1988 Master Administrative Agreement without proper funding or regulatory authority. Third National Bank also directly authorized an amendment to the very insurance policy which was being sold to Louisiana citizens. Summit's close relation to and regulation by the State of Louisiana and the direct actions of Third National Bank directed at Louisiana beneficiaries are in sharp contrast to the circumstances of *Hanson* and compel the assertion of personal jurisdiction rather than denial.

The appellate court did not depart from proper judicial

procedure in reaching its decision, nor does its decision conflict with any controlling precedent. Accordingly, Third National Bank's Application for Writ should be denied.

Respectfully submitted,

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APPENDIX A — APPELLATE DECISION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 92 CA 1625

DOUGLAS D. GREEN, COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA

VERSUS

GROUP PROGRAMS, INC., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., THIRD NATIONAL BANK, LIBERTY MUTUAL INSURANCE COMPANY, PATRICK HUVAL, DIANNE V. FLORES, THOMAS HUVAL, DALE F. HUVAL, KATHRYN H. PONTIFF

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, NUMBER 364,878, IN AND FOR THE PARISH OF EAST BATON ROUGE, LOUISIANA, HONORABLE MICHAEL PONDER, JUDGE PRESIDING.

BEFORE: LOTTINGER, C.J., FOIL, AND FOGG, JJ.

LOTTINGER, CHIEF JUDGE [stamped] JUL 2 1993

This appeal is brought by the Insurance Commissioner for the State of Louisiana from a judgment dismissing a Tennessee bank from an insurance liquidation proceeding on grounds that the bank does not have sufficient minimum contacts with Louisiana to render the bank subject to the personal jurisdiction of Louisiana's courts.

Appendix A

FACTS

In 1984, a Louisiana resident, Patrick Huval, approached a Tennessee insurance broker, Gibbs Smith, for information about setting up a multiple employer insurance trust in Louisiana. Smith had previously set up such a trust with Third National Bank in Nashville (the Bank) as trustee, and approached the Bank to act as trustee for Huval's trust, the Summitt Insurance Plan Trust (the Trust). The Bank has no offices or employees in Louisiana, and otherwise conducts no business in this state.

Huval had his Louisiana insurance company, Group Programs, Inc., act as the administrator for the Trust, leaving the Bank with few duties other than to hold a group master insurance policy from which Group Programs' Louisiana customers would obtain coverage for health and other insurances. The Bank properly obtained such a policy from Durham Life Insurance Company (Durham), through Smith's efforts. The Trust was confected in 1985 by means of an Insurance Trust Agreement between the Bank and Group Programs, and a Master Administrative Agreement between Group Programs and Durham. Group Programs operated the Trust from its offices in Breaux Bridge, Louisiana.

In 1988, Durham allowed the policy to expire and declined to renew it. No other policy of insurance was obtained to replace the lapsed Durham policy. The Trust was now uninsured, and although the 1985 Insurance Trust Agreement provided that the Trust would immediately terminate if coverage lapsed unless new coverages could be obtained without gaps, Huval continued to operate Group Programs and the Trust. Huval reengineered the Trust by entering into a second Master Administrative Agreement between Group Programs and the Trust, now standing in the place of Durham as its

own insurer, in June of 1988. Marjorie Kirkpatrick, the Bank's employee, signed this agreement on behalf of the Trust.

In 1990, the scheme unraveled when the Trust was placed in liquidation by petition of the Insurance Commissioner. In its attempt to marshall the assets of the Trust, the Insurance Commissioner named the Bank as a defendant for breaching fiduciary duties owed under the trust agreement to trust beneficiaries: the Louisiana residents who were employees of the companies subscribing for insurance coverage under the trust plan.

The Bank resisted the suit on grounds that it is not subject to the personal jurisdiction of Louisiana courts under the long-arm statute, La.R.S. 13:3201. It succeeded by asserting via the declinatory exception raising the objection of lack of personal jurisdiction that it lacks sufficient minimum contacts with the state to satisfy the due process requirements of the Louisiana and United States constitutions.

ASSIGNMENT OF ERROR

In its appeal the Insurance Commissioner contends that the district court erred in dismissing the Bank for lack of personal jurisdiction and erred in finding that the Bank had not established minimum contacts with the State of Louisiana so as to subject it to Louisiana's long arm jurisdiction. La.R.S. 13:3201 *et seq.*

DISCUSSION

The Louisiana long-arm statute provides several bases for the assertion of jurisdiction over nonresidents, the broadest of which turns upon a finding of minimum contacts and fundamental fairness, the more specific enumerations being sufficient in and of

themselves for the assertion of jurisdiction. *See* La.R.S. 13:3201, and the Comments thereunder. *See also Thompson v. Great Midwest Fur Company,* 395 So.2d 840, 842-843 (La. App. 1st Cir. 1981). The purpose of the long-arm statute is to extend personal jurisdiction of Louisiana courts over nonresidents to the full limits of due process, i.e., to any nonresident who has had minimal contacts in the state. *Thompson v. Great Midwest Fur Company,* 395 So.2d at 843. The section must be liverally interpreted in favor of finding jurisdiction. *Id.*

In this case, we find a bank which acted, from 1985 through 1990, as the paid trustee of an insurance trust operating at one time solely in this state, which trust was formed only as a result of the compensated actions of the nonresident bank in entering into the Insurance Trust Agreement. We find that these facts constitute sufficient minimum contacts by the Bank with Louisiana to satisfy the due process requirements of the Louisiana and United States constitutions, such that it is fair to require the Bank to appear in Louisiana's courts. *See Thompson,* 395 So.2d at 842.

The Bank knew at the inception of the trust that Huval and Group Programs were setting up business in Louisiana. The Bank further knew that it was receiving its trustee's fee as a result of the business activities of Huval and Group Programs in Louisiana. The relative amount of this fee to the premiums paid by the subscribers is irrelevant.

Therefore, we reverse the trial court's erroneous findings that the bank did not have sufficient minimum contacts with the state to justify the extension of long-arm jurisdiction over it.

Appendix A

CONCLUSION

Therefore, for the above and foregoing reasons the judgment of the trial court is REVERSED and this case is REMANDED for further proceedings. REVERSED AND REMANDED.

APPENDIX B — 1985 INSURANCE TRUST AGREEMENT

INSURANCE TRUST AGREEMENT

This Trust Agreement is made and entered into this *8* day of *March*, 1985 by and between *Group Programs, Inc.*, as Grantor, ("Grantor") and Third National Bank in Nashville, a National Banking Association with its principal offices in Nashville, Tennessee as Trustee ("Trustee").

For and in consideration of the mutual convenants contained herein and other good and valuable consideration, the receipt of all of which is hereby acknowledged, the parties hereto agree as follows:

1. *Recitals.* Grantor desires to establish a Trust for the purpose of holding one or more group master insurance policies issued by one or more insurance companies for the purpose of providing insurance benefits to various employees of participating employers (Participating Employers) and their covered dependents who accept in writing the terms of this Trust Agreement and agree to be bound by it. Grantor intends to act as Administrator and agrees to accept the responsibility for all administrative duties required in connection with any such group master policy conditions hereinafter set forth.

2. *Establishment of Trust.* The Trustee declares that it will receive and hold, as Trustee, the group master insurance policy or policies described herein, and that it will administer the Trust on the terms and conditions hereinafter set out. This Trust shall be known as the:

Summitt Insurance Plan Trust ("Trust").

3. *Duties of Trustee.*

Appendix B

A. The Trustee, acting through the Grantor, shall make application to an insurance company or companies, duly authorized to conduct the business of insurance in the State of Tennessee, and other states in which Participating Employers are located, for the issuance of a policy or policies of group insurance, which term shall include, but not be limited to, all forms of group or franchise life, health, accident, and disability insurance, to be issued to the Trustee, providing such benefits for Participants or their covered dependents as the Grantor, acting in its capacity as Administrator shall determine from time to time, in its sole discretion. Such policy or policies may contain such provisions and be subject to such limitations and conditions as Administrator as agreed upon with the Insurance Company shall determine from time to time, in its sole discretion.

B. The Trustee shall hold such policy or policies of group insurance and safely keep same and shall execute such documents as may require its signature as owner of such policy or policies, for the purpose of obtaining and maintaining the policy or policies in force, or for any other purpose required of the owner of such group master policy or policies.

C. The Trustee shall act at the direction of Administrator in taking any and all actions regarding the termination, modification or replacement of any policy held hereunder and may delegate to Administrator the authority to act on its behalf in regard to any such determination, modification or replacement.

D. The Trustee shall have no duty to pay or collect any premiums or assessments on any group master policy or policies. Trustee shall not be required to institute any form of legal proceeding to collect any such premium or assessment. Likewise, the Trustee shall have no duty to determine whether the Administrator is properly performing its duties hereunder.

Appendix B

4. *Duties of Grantor.*

A. Grantor shall act as Administrator and perform all administrative duties in connection with the group master policy or policies of insurance issued to Trustee not performed by the issuing insurance company including, but not limited to, billing, collecting, and remitting premiums to the appropriate insurance company or companies, processing of applications for insurance coverage, issuance of certificates of insurance, and processing and payment of claims, together with making all decisions as to purchase, issuance, termination, modification or replacement of such group master policy or policies.

B. Administrator agrees to pay Trustee its regular and customary fee each year, or portion thereof, in advance, for its services hereunder, to be determined in accordance with Trustee's then current fee schedule. In addition, Administrator shall reimburse Trustee for any and all reasonable and necessary expenses which it may incur in the performance of its duties as Trustee including, but not limited to, attorney fees and costs.

5. *Resignation or Removal of Trustee.*

A. Trustee may resign at any time by giving to Administrator 30 days prior written notice of resignation. Trustee may resign immediately at any time that Administrator amends, or attempts to amend, this Trust Agreement without the written consent of Trustee.

B. Administrator may remove Trustee at any time by giving to Trustee 30 days prior written notice of removal.

6. *Appointment of Successor Trustee.* In the event of resignation or removal of any Trustee, Administrator shall have the

right to appoint a Successor Trustee. Such Successor Trustee may qualify by accepting this Trust in writing to Administrator.

7. *Amendment or Termination of Trust.*

A. This Trust may be terminated by Administrator at any time by giving to Trustee and all Participants 30 day prior written notice of termination.

B. This Trust shall terminate immediately in the event that any group master insurance policy or policies held hereunder terminate, lapse, expire without being renewed, or are cancelled for any reason unless the coverage or coverages provided in such policy or policies are replaced immediately without any gap(s) in coverage by like coverages provided by a substitute or successor insurance company approved by Trustee in writing in advance.

C. This Trust may only be amended by the Administrator, with the consent of Trustee. Both the Amendment and Trustee's consent thereto shall be in writing to be effective.

8. *Liability of Trustee and Hold Harmless.*

A. Trustee shall be protected in relying on any paper or document believed by it to be genuine and to have been made, executed or delivered by the party purporting to have made, executed or delivered the same, and shall be protected in relying and acting upon the opinion of counsel or upon the guidance and directions of Administrator in connection with any matter pertaining to execution of the Trust. The Trustee shall not be liable for any action taken or omitted by it in good faith nor for the act of any agent, employee, or attorney selected by Trustee with reasonable care. The Trustee may delegate any of its ministerial

powers or duties hereunder to its agents or employees.

B. Trustee shall be protected in acting upon direction of the Administrator, and Administrator shall hold Trustee harmless from any and all liability, loss, damage, cost or claim of any type whatsoever as a result of serving as Trustee hereunder except to the extent that such liability, loss, damage, cost or claim results from the negligence of Trustee in failing to safely hold the group master insurance policy or policies hereunder or in failing or refusing to perform any duty set out in Paragraph 3 hereof after written notice and request by Administrator.

9. *Dealing with Third Parties.*

A. No insurance company or other party shall be deemed a party to this Trust for any purpose or be deemed responsible for its validity or sufficiency. The obligations of any insurance company or other party contracting with the Trustee shall be measured and determined solely by the terms and conditions of the group master insurance policy or policies or other contracts which may be involved.

B. Any employer may become a Participating Employer in the insurance plan or plans provided by the group master insurance policy or policies held by Trustee by applying therefore and meeting all requirements imposed by Administrator and the insurance company underwriting such policy or policies including, but not limited to, underwriting and eligibility requirements. The terms and limitations of the insurance coverages provided to the Participants and their covered dependents the eligibility therefore, and the extension and termination of coverage thereunder shall be governed solely by the rules and regulations promulgated by Administrator and approved by the underwriting insurance

company or companies, and the applicable certificates and policies of insurance. Trustee shall have no direct or implied obligation to any Participating Employers.

10. *Spendthrift Clause. Limited Interest.*

A. No part of the Trust Estate, the group master insurance policy or policies held by Trustee hereunder nor the insurance proceeds or benefits payable under such group master insurance policy or policies, shall be subject to executing or other legal process for any obligation of any Participating Employer, or to the claims of creditors of any Participating Employer, in any manner, nor shall any such Participating Employer, have the power to sell, mortgage or encumber same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise (except to the extent that policy benefits may be assignable to health care providers under the terms of any policy or policies hereunder.)

B. During the continuance of this Trust, no Participating Employer, nor any person claiming by, through, or under any one or more of them, shall have any right, title or interest in or to the Trust Estate, or any part thereof, except for such person's interest in any benefits provided under the terms of the group master insurance policy or policies hereunder.

11. *Severability.* In the event that any one or more provisions of this Trust Agreement shall be held or determined to be invalid or unenforceable by any court of competent jurisdiction or other appropriate authority, the remainder of this Trust Agreement shall continue and remain in full force and effect as if said invalid and/or unenforceable profision or porvisions had not been included herein.

Appendix B

12. *Governing Law.* This Trust is created and accepted in the State of Tennessee and all questions pertaining to the validity or construction of said Trust shall be determined in accordance with the laws of the State of Tennessee.

In witness whereof, and as evidence of acceptance of the Trust created hereby, the parties have executed this agreement of the 15 day of March, 1985.

Witnesses:
s/ Linda Carroll

Third National Bank in Nashville,
Trustee,
By: s/ Elizabeth C. Thompson
Vice President Title

Witnesses:
s/ Dianne B. Mous
s/ Patricia Benard

Group Programs, Inc.
Grantor/Administrator
By: s/ Patrick Huval

APPENDIX C — 1988 MASTER ADMINISTRATIVE AGREEMENT

MASTER ADMINISTRATIVE AGREEMENT

This master agreement, by and between Summit Insurance Plan Trust, hereinafter called the "Trust" and Group Programs, incorporated (hereinafter call the "Administrator")

is effective June 1, 1988

WITNESSETH THAT:

WHEREAS, the Company and the Administrator are desirous of entering into an Agreement reflecting certain rights and obligations of the parties with respect to the marketing and administration of group insurance plans, including those indicated in the attached Addenda and those which may hereafter be attached, all of said plans being thereinafter referred to as the "Plans":

NOW, THEREFORE, for and in consideration of these premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

General Conditions

In recognizing the Administrator as the Administrator with respect to the Plan(s), subject to all the terms and provisions of this Agreement,

1. The Company agrees:

Appendix C

a. Not to make available or to disclose, to individuals or firms, without prior written approval of the Administrator, any documents or supporting data prepared by the Administrator in connection with the Plan(s) other than to make available or disclose such information, documents or data to insured persons or beneficiaries, prospective insureds, attorneys, courts of law or regulatory bodies: the Trust shall have an unlimited right at any time to provide such information to its own attorneys and shall have the right to provide such information to such other parties as would be normal, reasonable and customary in the every day operation of its business.

b. To pay said Administrator:

1. Administrative allowances

All such allowances will be agreed to in writing in specific case addenda attached hereto and may be modified from time to time by mutual written agreement. All such allowances where permitted by state law will be payable to the Administrator.

c. Unless specified otherwise in the addenda attached, notification of any adjustments to the benefits of the schedule of premium rates will be in accordance with those requirements established in the master policy.

d. That it will indemnify the Administrator and hold it harmless from and against any and all liability the Administrator may incur solely as a result of an act or omission of the Trust, independently of all other causes. The Administrator will have no right to indemnification

unless: (i) the Trust is promptly notified of the claim against the Administrator for which indemnification is sought and is, at the time of such notice, expressly notified that indemnification will be sought: (ii) the Trust shall at all times while such claims is pending have the right (but not the duty, to defend said claim in its own name or in the name of the Administrator: (iii, the Trust shall at all times while such claim is pending have the right (but not the duty) to settle such claims: and (iv) the Administrator will at all times cooperate with the Trust in defense of the claim.

e. All records, ledgers, accounts, files and any other documents generated by the Administrator in connection with its duties as such are, and all shall remain, the property of the Administrator, but the Trust shall have access to all such records and documents as elsewhere provided in the Agreement.

2. The Administrator agrees:

a. To maintain throughout the term of this Agreement all licenses and certificates of registration which may be required under all applicable State, Federal and Local laws and regulations to enable the Administrator to act as such and to perform its duties and responsibilities hereunder.

b. To conform its method of conduction business to the reasonable rules of the Trust which are communicated to the Administrator, and to comply with all applicable Federal, State and Local laws and regulations.

Appendix C

c. That premiums will be established by the Trust in accordance with the terms of the Group Policy(ies): and that all other charges and future modifications thereof made to Insureds by the Administrator will be subject to the prior written approval of the Trust.

d. That in connection with the administration of the Plans, it will not use policy forms, certificate forms or administrative forms except such forms as shall have been approved in writing by the Trust. The procedures for the use of such forms shall be set forth in writing by the Trust.

e. During the term of this Agreement all documents, books and records of the Administrator pertaining to Plan(s) specified in attached addenda will be open for inspection by the Trust at all reasonable times and that copies thereof shall be provided the Trust as required in the usual and regular conduct of its business and in the event of termination of Plan(s) covered by the attached addenda, until all matters related to the administration of such Plan(s) are resolved to the satisfaction of the Trust.

f. That it will indemnify the Trust and hold the Trust harmless from and against any and all claims, loss, damages and liability (including the Company's reasonable legal fees and expenses) caused or contributed to by any negligent, fraudulent or improper act or omission on the part of any partner, agent, employee or other person acting on behalf of the Administrator and by any failure to perform its obligations under the terms of this Agreement (unless such act, omission, or failure was at the written direction of the Trust).

Appendix C

g. The Administrator has no authority to do, warrants that he has not done and agrees not to do the following: (1) to make, alter or discharge any contract, policy or receipt, nor to waive any forfeiture, provision or condition thereof: (2) to receive any monies on behalf of the Trust except upon strict compliance with the terms and conditions of the receipts, policies or contracts issued by the Trust and with the rules of the Trust: (3) to rebate or offer to rebate any party of a premium: (4) to issue or circulate any advertising material, circular, pamphlet or any other release relating to the Trust unless the same shall have been authorized and approved in writing by the Trust: (5) to make any misrepresentation or incomplete comparison for the purpose of inducing a policyholder, group account or insured person in this or any other company to convert, lapse, forfeit or surrender his insurance therein, or for any other purpose: (6) to bind or obligate the Trust or subject the Trust to any liability unless specifically authorized in writing by the Trust.

h. That where a policy is issued to a trustee or trustees, a copy of the trust agreement and any amendment thereto shall be furnished to the Trust by the Administrator and shall be retained as part of the official records of both the Trust and the Administrator for the duration of the policy and live years thereafter.

ARTICLE II

Marketing

1. All printed materials used in connection with administering the Plans, soliciting insureds thereunder

and communicating with Insureds in any way will be prepared by the Administrator. No such materials shall be used without the prior written consent of the Trust. Printing expenses will be paid either by the Administrator or by the Trust as shown in the attached addenda for each specific policy: in the event such expenses are to be paid by the Trust for a specific policy, as shown in the addenda, such expenses will be paid only to the extent those expenses are specifically authorized and accepted in advance in writing by the Trust. All costs of distributing such materials shall be borne by the Administrator.

2. The form and content of all advertising with respect to the Plans must be approved in advance in writing by the Trust. With respect to all advertising materials which have been approved (and not thereafter disapproved) by the Trust, the time and place of use shall be in the discretion of the Administrator: provided, however, that no advertising material shall be used or distributed for use (i) in jurisdictions and locations where the Trust has stated in writing to the Administrator that such material may not be used or (ii) in such a manner as to violate any State, Federal or Local law, rule or regulation.

ARTICLE III

Administration

1. The Administrator is to issue certificates or bill and collect premiums with respect to any Plan(s). The Administrator agrees:

   a. To issue certificates for policies where required by state law to insureds who apply and who meet the

Trust's underwriting standards. When any specific Plan requires a prospective Insured to complete an application or enrollment form including questions as to the health of any person to be insured, the acceptance or declination of such person(s) shall be made by the Administrator. The Trust agrees to permit the Administrator to accept or decline applications subject to underwriting guidelines attached to and made a part of this agreement.

b. To transmit premium notices, lapse notices and, where applicable, reinstatement application forms to Insureds as directed by the Trust; to prepare and mail premium notices to Insureds reasonably in advance of the premium due date but in no event later that the date such notices are required to be mailed by any applicable State, Local or Federal law or regulation: and to receive and record paid premiums in the manner and fashion as required by the Trust.

2. Administrator agrees to perform the following services in administration of claims.

a. Provide insured persons with claim forms and receive from insured persons claim material supporting each claim, using claim forms agreed to by the Trust.

b. Administrator will promptly consider and, in accordance with the terms of the applicable policy, and rules and procedures for paying claims, pay all such claims due, or decline such claims, including a clear statement summarizing for the insured for the

insured person the benefits to which entitled or the reason for declination.

3. To maintain accurate and comprehensive accounting and statistical records including premium and coverage records. All records, documents, data and solicitational, promotional and administrative materials prepared, accumulated, distributed or used by the Administrator in connection with the Plans shall be maintained in their original form by the Administrator during the terms of this Agreement and thereafter until the latest of the following dates:

   (i) the date on which all known claims under the Plans have been paid or otherwise finally resolved;

   (ii) the date five years after termination of this Agreement;

   (iii) the date as of which neither the Trust nor the Administrator is no longer required to maintain such records, documents, data and materials by any applicable State, Federal or Local law or regulation.

4. To perform all clerical and administrative functions necessary for prompt, proper and efficient service to insureds, the Trustee and the Settlor of the Plan(s) referred to in specific case addenda.

Appendix C

ARTICLE IV

Other Conditions

1. Either party may terminate the Agreement at any time by giving sixty (60) days prior written notice.

2. In the event of termination of the Plan(s) specified in the addenda, the Administrator agrees to refund all commissions, administrative and production allowances on unearned premium for such Plan(s).

3. Should either party fail to perform in accordance with this Agreement and such failure should continue without being remedied for a period of sixty (60) calendar days after receipt of written notice thereof given to the defaulting party by the other party, the party giving notice may after said sixty (60) days at its sole election terminate this Agreement without loss of its rights or remedies either in law or in equity.

4. No assignment, transfer or disposal of any commissions, service, administration or other fees by the Administrator may have on account of this agreement may be made at any time without written approval of the Trust, except at time of execution of this agreement Administrator may assign payment of commissions due to a business entity, engaged in the sales and service of insurance, in which he is proprietor, a partner or employee; such assignment to be indicated below. The duties of the Administrator hereunder may not be delegated, directly, or indirectly to any other person, firm or corporation without the prior written consent of the Trust. The Administrator will

promptly notify the Trust in the event of any change in its ownership or its management personnel.

5. The Administrator will promptly notify the Trust of all pending litigation affecting or which may affect the Trust or arising under policies or certificates of insurance issued by or on behalf of the Trust by the Administrator.

This is a contract for services performed and nothing herein should be construed to establish or constitute an employee relationship between Administrator and Trust.

SUMMIT INSURANCE PLAN TRUST

Dated May 11, 1988 By s/ Marjorie Kirkpatrick

ADMINISTRATOR

GROUP PROGRAMS, INC.

Dated May 17, 1988 By s/ Patrick Huval

ADDENDUM TO MASTER ADMINISTRATIVE AGREEMENT

By and between *Group Programs, Incorporated* (Administrator) and Summit Insurance Plan Trust (the Trust). This addendum sets forth allowances to be paid Administrator for one or more group policies specified, shows whether the Trust or the Administrator bills and collects premiums; show whether the Trust or Administrator pay claims; and sets forth whether or not the Trust is responsible for payment of printing expenses for solicitation of eligible applicants. This addendum is subject to all the terms and conditions of the Master Administrative Agreement. Unless otherwise specified first year commissions are payable with respect to premiums paid for the first year of insurance under the group policy for each insured person, and renewal commissions are payable with respect to all other premiums for that insured person.

Pol #	Name Group Programs, Inc.	First Year Comm	Renew Comm	Adm Fee	Who Bills and Collects Premiums	WhoPays Claims*	Who Pays Printing Expenses
	Summit Insurance Plan Trust	VS	VS	13%	Administrator	Administrator	Administrator

*Medical/Dental claims only

Agent-Administrator issues certificates under account shown above.

This addendum is effective *June 1, 1988.*
If an addendum was previously in effect for a policy or policies listed above, the provisions of this addendum do not affect the prior agreement with respect to such policy or policies.

AGENT-Administrator

By s/ Patrick Huval

Dated May 17th, 1988

Summit Insurance Trust Plan

By s/ Marjorie Kirkpatrick

Date May 11th, 1988

APPENDIX D — CERTIFICATE OF INSURANCE

CERTIFICATE OF INSURANCE

Summit Insurance Plan

(Herein called "Plan", "We", "Us", "Our" or "Ours")

CERTIFIES that, subject to the terms of the group policy numbered below (herein called the Policy), the person named on the coverage card is insured on the effective date shown. The Effective Date shown is the effective date of the most recent change in benefits for which the person named is insured.

POLICY NUMBER:	3174
GROUP POLICYHOLDER: (Herein called the "Holder")	TRUSTEES OF THE SUMMIT INSURANCE PLAN TRUST
PREMIUM DUE DATE:	First day of the calendar month
POLICY MONTH:	The first day of a period which begins with the premium due date and ends on the day preceding the next following premium due date.

In consideration of the application for this policy, a copy of which is attached and made a part hereof, and in consideration of the payment by the Policyholder during the continuance of this policy of all premiums when they fall due as provided herein, the Plan agrees to pay the amounts of insurance set forth herein, with respect to the several persons insured hereunder, in accordance with and subject to the provisions of this policy.

"Plan Description" as used herein means the cover card affixed to this plan certificate or the latest of such cards issued.

Appendix D

Portions of the Policy are described on this and the attached pages. All benefits described are subject to the Policy, which alone makes up the agreement under which payments are made.

This certificate replaces any and all certificates and riders that may have been issued to the covered person under any group policies issued to the Holder by us.

Jurisdiction: This policy is delivered in and is governed by the laws of Louisiana.

ALL EXPLANATIONS OF BENEFITS CONTAINED IN THIS CERTIFICATE ARE SUBJECT TO THE TERMS, CONDITIONS, DEFINITIONS, LIMITATIONS, AND EXCLUSIONS CONTAINED IN THE GROUP MASTER POLICY. IN THE EVENT OF A CONFLICT BETWEEN THE LANGUAGE OF THIS CERTIFICATE AND THAT OF THE GROUP MASTER POLICY, THE LANGUAGE OF THE GROUP MASTER POLICY SHALL GOVERN.

THE ADMINISTRATOR OF YOUR PLAN IS:

Group Programs, Inc.
P.O. Box 1210
Breaux Bridge, LA 70517

APPENDIX E — AMENDMENT TO GROUP POLICY

AMENDMENT TO GROUP INSURANCE
POLICY NUMBER: 3174

ISSUED TO: THIRD NATIONAL BANK,
NASHVILLE, TENNESSEE
TRUSTEE OF THE
SUMMIT INSURANCE PLAN TRUST

EFFECTIVE: APRIL 1, 1989

It is hereby agreed between the Policyholder and the Summit Insurance Plan Trust that:

That the following provisions are added to the group policy:

PRE-CERTIFICATION REVIEW SERVICE PROGRAM
SPECIAL PROVISIONS

Pre-Treatment Review Plan

This plan may include the Pre-Certification Review Service (Pre Cert) program. This means that subject to all other provisions of the plan, Pre-Cert will review each proposed hospital admission, and each proposed surgical procedure which is to be performed outside the doctor's office (excluding minor first aid) and will determine and authorize

- the medical necessity of such treatment;
- the appropriate location for such treatment to be provided, and
- in the case of a hospital admission, the length of stay for each in-patient hospital confinement.

Appendix E

Pre-Cert must be contacted:

- in advance of treatment being rendered; or
- in the case of an emergency, within 48 hours of the date emergency treatment begins.

The term "emergency" means:

(a) an accident which requires immediate treatment; or

(b) a "life threatening" illness which requires immediate treatment at a hospital. The doctor who attends the covered person must certify that the illness was "life threatening".

If Pre-Cert is not contacted as described above, then expenses related to a hospital admission or out-patient surgery will be reduced by 20%

Such 20% is not considered a Covered Charge for any purpose under the policy, including but not limited to:

(1) Benefits payable;
(2) Deductible;
(3) Coinsurance Rate;
(4) Individual/Family Out-Of-Pocket limit.

No Benefits are payable for any Treatment, Service or Hospital Confinement which is not Medically Necessary.

Covered Charges are subject to any Deductible or Coinsurance Rate requirements.

Appendix E

Second Opinions:

Pre-Cert may require a second opinion before granting preauthorization for expenses incurred for certain medical or surgical treatment. In this case, these expenses:

- will not be subject to the plan deductible; and
- will be payable at 100%

Alternate Care and Treatment:

Alternate forms of care and treatment may be recommended by Pre-Cert. Pre-Cert may from time to time suggest the use of alternate treatment plans or alternate treatment facilities such as Home Health Care or Hospice Care which may not be included in the plan, or are included under the plan but on a basis that differs from the care and treatment now recommended by Pre-Cert. When this happens, subject to approval of the covered person and the covered person's:

- family; and
- attending doctor;

These expenses will be payable under the plan on the same basis as the care and treatment for which they are substituted.

HOME HEALTH CARE

The plan will pay the reasonable and customary charges made by a Home Health Care Agency for:

(1) visits to your home by any of the following:
  (a) a registered nurse or licensed practical nurse,

Appendix E

(b) a physical, occupational, respiratory or speech therapist,
(c) a home health care aide,
(d) a licensed midwife or licensed nurse midwife

Summit Insurance Plan will pay for only one visit per day and up to 40 visits in each calendar year. Four hours of service provided by a Home Health Care Agency is considered to be one home health care visit.

(2) The following services or supplies when provided at home:
(a) medical supplies
(b) drugs and medicines
(c) laboratory services

Payment for these services and supplies is limited to the amount that the Summit Insurance Plan would have paid if the covered person had been confined in a hospital as a registered bed-patient.

No amount will be paid for Home Health Care covered expenses unless these conditions are met:

(1) Continued confinement in a hospital or Extended Care Facility would be required if home health care had not been available.
(2) The confinement at home is medically necessary and is not for custodial care.
(3) The treatment at home starts:
(a) after a period of confinement in a hospital or Extended Care Facility that lasted for at least 3 days; and
(b) not more than 7 days after such confinement ended.

Appendix E

(4) The treatment at home is for the same illness (or related condition) which made the confinement in the hospital or Extended Care Facility necessary.
(5) A physician must have a written order for home health care services.
This order must be renewed every 30 days.
(6) The Home Care Agency must be certified.

HOSPICE CARE

The plan will pay for the care of a terminally ill employee or dependent. Terminally ill means that the patient has a life expectancy of 6 months or less as certified by the attending physician. Covered Expenses include:

(1) "Hospice Care In-Patient Covered Expenses" up to 60 days. This means such charges by a hospice for confinement as an in-patient:

(a) for room and board during such confinement; and
(b) for Hospice Services furnished under a Hospice Care Program

(2) "Hospice Care Out-Patient Covered Expenses" up to the reasonable and customary charges, with a maximum of $3,000, during any one benefit period. A benefit period begins when the attending physician certifies the employee or dependent is terminally ill and ends six months later or when the person dies if earlier. These expenses are incurred for Hospice Services rendered on an out-patient basis.

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"Hospice Services" means all services and supplies other than room and board furnished to the terminally ill person or to this family through a Hospice Care Program.

"Hospice Care Program means a formal program directed by a Doctor for a terminally ill person. This program is through

A. a centrally-administered and nurse-coordinated program which.

(a) provides a coherent system primarily of home care;
(b) uses a Hospice Team;
(c) is available 24 hours a day, seven days a week, or

B. confinement in a Hospice.

The Hospice Care program:

a. must meet the standards set by the National Hospice Organization. If such Program is required by a state to be licensed, certified or registered, it must also meet that requirement to be considered a Hospice Care Program.
"Hospice Team" means a team of professional and volunteer workers who provide care to:

A. reduce or abate pain or other symptoms or mental or physical distress;

Appendix E

B. meet the special needs arising out of the stresses of terminal illness, dying and bereavement.

A Hospice Team must include:

(a) a Doctor; and
(b) a registered graduate nurse.

It may also include any of the following:

(a) a social worker
(b) a clinical psychologist;
(c) a physical therapist; or
(d) an occupational therapist

"Hospice" means a facility which provides short periods of in-patient confinement for a terminally ill person in a home-like setting for either direct care or respite. This facility:

A. may be either free-standing or alliliated with a Hospital;
B. must operate as an integral part of the Hospice Care Program; and
C. must provide care for at least 2 but no more than 8 persons who are:

(a) not related;
(b) terminally ill; and
(c) confined as in-patients.

The following provisions are deleted, amended and/or changed as follows:

Appendix E

PAGE 9 —SCHEDULE OF BENEFITS

The lifetime benefit maximum for all charges in connection with bone marrow and/or organ transplant is hereby changed from $50,000 to $250,000.

The lifetime benefit maximum for all charges for care or treatment related to Acquired Immunity Deficiency Syndrome (AIDS) is hereby deleted. This benefit is now covered as any other illness.

PAGE 10 — SCHEDULE OF BENEFITS

Room and Board, not to exceed the hospital's average semi-private room rate 80%
is hereby changed to:
Room and Board (including post intensive care room), not to exceed the hospital's average semi-private room rate 80%

PAGE 10 — SCHEDULE OF BENEFITS

Intensive Care Units, not to exceed twice the hospital's average semi-private room rate 80%
is hereby changed to:
Intensive Care Units, not to exceed three times the hospital's average semi-private room rate 80%

PAGE 15 — MEDICAL BENEFITS

The lifetime maximum for transplantation of an organ is hereby changed from $50,000 to $250,000.

25. The Program will cover eligible expenses related to the transplantation of an organ; including expenses for patient

screening, organ procurement, transportation of the organ, transportation of the patient and/or donor, surgery for the patient and donor and immunosuppressant drugs, subject to policy limitation of $250,000 per covered person per lifetime. The following conditions must be met in order for this coverage to apply:

PAGE 23 — DENTAL PLAN EXCLUSIONS AND LIMITATIONS

The following is added as an exclusion and limitation:
16. Orthodontic benefits to any person age 19 or older.

PAGE 34— EXCLUSIONS AND LIMITATIONS FOR ALL MEDICAL BENEFITS:

Exclusion R is hereby deleted in its entirity and the following is added as exclusion R:

R. Any expense for male or female sterilization, reversal, sex change or implementation within any sex organ such as but not limited to penal prosthesis or any expense for correction or to assist in correcting or testing of impotency, fertility, or infertility whether voluntary or otherwise, any artificial organ implants, transplantation of other than human organs, in vitro fertilization and artificial insemination;

Exclusion S is hereby deleted in its entirity and the following is added as exclusion S:

S. Charges made, or services provided, by any closely related person. "Closely related person" means you, your spouse, or child, and you or your spouse's grandchild, brother, sister or parent. For the purposes of this insurance, "closely related person" includes your employer and any employee of your employer;

Appendix E

PAGE 35 — EXCLUSIONS AND LIMITATIONS FOR ALL MEDICAL BENEFITS:

Exclusion V is hereby deleted and the following is added as exclusion V:

V. Marriage counseling, family relations counseling and/or co-dependency treatment;

Exclusion W is hereby deleted and the following is hereby added as exclusion W;

W. Birth control medication or devices whether medically necessary or not, appetite suppressant drugs, dietary supplements, vitamins;

Exclusion Y is hereby deleted and the following is hereby added as exclusion Y:

Y. Radical heratotomy, exotropia, esotropia, myopia, (near sightedness) hyperopic, (far sightedness), presbyopia, astigmatism, strabismus and/or any similar condition or procedure for the correction of refractive errors.

Exclusion Z is hereby deleted and the following is hereby added as exclusion Z:

Z. Speech and/or occupational therapy (except for home health care) and except when ordered by a physician for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurologic disease.

Appendix E

Exclusion AA is hereby deleted and the following is hereby added as exclusion AA:

AA. Services, supplies, food or treatment in connection with or related to obesity and/or any weight control program whether medically necessary or not, for any exercise program, for removal of weight or fat, whether for obesity or for any other diagnosis and whether by diet, injection of any fluid or use of any medications or surgery of any kind and/or resuction of excess skin or fat following weight loss or pregnancy.

Exclusion FF is hereby deleted and the following is hereby added as exclusion FF:

FF. Any care or treatment for realignment of jaws, including, but not limited to atrophy of the lower jaw, occlusion, maxillofacial surgery tempermandibular joint dysfunction and retrognathia.

PAGE 36 — PRE-EXISTING CONDITIONS

A. Medical expenses incurred during the first 12 months that coverage for the Employee and/or Dependent is in force under this contract will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which the Covered Person received treatment or services, or was prescribed drugs, or for which any prudent person should have sought medical attention during the 12 month period immediately prior to the effective date of such coverage.

Appendix E

ACCEPTED: Third National Bank,
Nashville, Tennessee,
Trustee of the
Summitt Insurance Plan Trust

Date: March 30, 1989

by: s/ Maggie Kirkpatrick
Maggie Kirkpatrick
Trust Officer

No. 93-1440

MAY - 3 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

THIRD NATIONAL BANK IN NASHVILLE,

Petitioner,

vs.

THE COMMISSIONER OF INSURANCE FOR THE STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Supreme Court

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I.

INTRODUCTION

If the facts alleged in respondent's brief were accurate, then without question Louisiana would have had sufficient "minimum contacts" to make constitutionally permissible its exercise of *in personam* jurisdiction over petitioner Third National Bank. To a remarkable degree, however, the Louisiana Commissioner of Insurance has mischaracterized the facts of this case. It is not possible, in a ten-page brief, for Third National Bank to respond to every erroneous assertion in the Commissioner's brief. Petitioner will address only the most significant factual and legal issues and implores the Court to verify the true facts for itself.

II.

THIRD NATIONAL BANK HAD NO DUTY TO MAINTAIN INSURANCE COVERAGE UNDER THE TRUST AGREEMENT

The Commissioner claims that the Insurance Trust Agreement of March 8, 1985 (hereinafter the "Trust Agreement"), imposed two duties upon Third National Bank in addition to those which Third National Bank discussed in its petition: (1) to *maintain* group insurance coverage for the Summit Insurance Plan Trust (hereinafter "Summit"), and (2) to *terminate* the trust if fully insured coverage could not be maintained. *See* **Brief in Opposition at 11**. Neither assertion is remotely correct.

The Commissioner's "duty to maintain" argument is premised solely on a disingenuous misreference, in the first full paragraph of page eleven of respondent's brief, to section 3B of the Trust Agreement. The Commissioner incorrectly argues that the modifying phrase "for the purpose of . . . maintaining the policy . . . in force" imposed an affirmative duty on Third National Bank to make certain that the trust continued to be insured. **Petition at A-48; Brief in Opposition at 7a**. Clearly, this is a grossly unreasonable interpretation of section 3B and of the entire Trust Agreement. Under the unambiguous framework of the Trust Agreement, it is impossible to conclude that Third National Bank had a duty to "maintain" insurance. Clearly, the Bank could not control that variable. In the first instance, no insurer might have been willing to issue a policy. Assuming a policy were issued, the insurer might cancel for any number of permissible reasons beyond the control of the Bank. For these and other reasons, the Trust Agreement does not impose an affirmative duty on the Bank to "maintain insurance coverage," and indeed, acknowledges that the trust terminates "immediately" if and when no coverage exists. *See* **Petition at A-50; Brief in Opposition at 9a**. The imposition of a duty on the part of Third National Bank to "maintain coverage" would not only be inconsistent with the plain terms of the Trust Agreement, but would violate Louisiana's statutory prohibition on the imposition of implied duties on trustees.[1]

---

[1] *See* discussion at page 7, *infra*.

III.

THIRD NATIONAL BANK HAD NO DUTY TO TERMINATE THE TRUST AGREEMENT

Similarly, the plain language of the Trust Agreement does not support the Commissioner's argument that Third National Bank had an affirmative duty to terminate the trust in the event Summit's insurance coverage lapsed. The plain language of the pertinent paragraph (section 7B) states that the trust terminates automatically upon lapse of coverage. **Petition at A-50; Brief in Opposition at 9a**. The Commissioner does not and cannot explain how the automatic termination provision can be squared with the alleged affirmative duty upon Third National Bank to terminate the trust upon cancellation of insurance coverage. This argument has no merit.

IV.

THE 1988 MASTER ADMINISTRATIVE AGREEMENT DOES NOT PROVIDE A BASIS FOR EXERCISING PERSONAL JURISDICTION OVER THIRD NATIONAL BANK IN LOUISIANA

The Louisiana Court of Appeal, in reversing the trial court's finding of no minimum contacts over Third National Bank in the state, relied exclusively upon the Trust Agreement for its conclusion that Third National Bank had sufficient minimum contacts with Louisiana. *See Green v. Group Programs*, 622 So. 2d 275 (La. Ct. App. 1st Cir. 1993); **Petition at A-6**. Apparently conceding that the jurisdictional basis relied upon by the Court of Appeal is constitutionally inadequate, the Commissioner's brief focuses largely on the 1988 Master

Administrative Agreement between Group Programs and Summit (hereinafter the "MAA") as an alternative source of "minimum contacts."

Even a cursory reading of the MAA, however, demonstrates it to be an incomplete and ambiguous document that contains no agreement by Third National Bank to do anything. For instance, although it states that it is "by and between Summit Insurance Plan Trust . . . and Group Programs, Incorporated," it subsequently contains agreements by an unidentified and undefined party "the Company." **Brief in Opposition at 13a**. It contains no signature line for either Third National Bank or "the Company," and is purportedly signed only on behalf of Summit Insurance Plan Trust and Group Programs, Inc. *Id.* at 22. Although the Commissioner would like to obliterate the distinction between Third National Bank and the Summit Insurance Plan Trust for the purpose of relying on this document, in fact trust law generally views a trustee and a trust as separate legal entities. Bogert, *Trusts and Trustees*, § 1 n.28 (2d Ed. Rev. 1984). Thus, legally Third National Bank is not even a party to this "Agreement." Accordingly, this document, even if it had any jurisdictional significance, may not be used as a basis for jurisdiction over the Bank.

Additionally, there is no proof in the record that the MAA ever became binding upon those who were parties to it. The MAA states that its purpose is to reflect the rights and obligations of the parties "with respect to the marketing and administration of group insurance plans." **Brief in Opposition at 13a**. It is undisputed that no group insurance plan existed after 1988. Accordingly, the MAA

never became binding upon its parties. *Real Estate Management, Inc. v. Giles*, 41 Tenn. App. 347, 293 S.W.2d 596, 599 (1956); *Zemurray v. Boe*, 235 La. 623, 105 So. 2d 243, 249 (1958); *Work Clothes Rental Serv. Co. v. Dupont Mfrs., Inc.*, 262 So. 2d 807, 809 (La. Ct. App. 1972) (for an agreement to become binding upon the parties, all suspensive conditions or conditions precedent must be met).

Finally, there is no evidence that the execution of the meaningless MAA fostered the continued operation of the uninsured entity which allegedly caused millions of dollars of losses. The Commissioner has never shown that any participant of Summit relied upon the MAA as a basis for assuming that Group Program's rogue operation of this "trust" was legitimate. The only evidence as to the use of the MAA is Patrick Huval's statement that the purpose behind the MAA's execution was a fruitless attempt on his part to obtain insurance coverage after the insurance policy issued by Durham Life Insurance Company (hereinafter "Durham") was cancelled in June 1985. **Brief in Opposition Exhibit 1 at 32-33. (Exhibit Envelope 2)**. Group Programs could and no doubt would have operated Summit as an uninsured entity without the MAA.[2]

---

[2] For the record, the Commissioner's suggestion that Third National Bank knowingly assisted Summit's continued operation after insurance coverage had lapsed is flatly untrue. The Bank never received notice of the cancellation of the Durham Life policy. **Petition at A-63.**

V.

THE ACTIONS OF GROUP PROGRAMS DO NOT PROVIDE A BASIS FOR FINDING MINIMUM CONTACTS OVER THIRD NATIONAL BANK

The Commissioner's perhaps most misleading argument is the assertion that Third National Bank took direct actions in Louisiana that give rise to the present claims. All of the actions that actually give rise to a legally assertable claim were actions taken by Group Programs, unilaterally. The Commissioner places enormous significance on the fact that the Summit Insurance Plan Trust was "extremely active" in Louisiana, and its "assets" were physically located in Louisiana. **Brief in Opposition at 19**. These "activities," all taken by Group Programs, and "assets," all controlled exclusively by Group Programs, are not a permissible basis for the assertion of personal jurisdiction over Third National Bank. *Worldwide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 296, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490 (1980). As noted by this Court in *Hanson v. Denckla*, 357 U.S. 235, 254, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), the issue of personal jurisdiction must be resolved "by considering the acts of the trustee." The Commissioner's arguments in this case ultimately reduce to the "center of gravity" theory expressly rejected in *Hanson*. *Id.*

VI.

LOUISIANA LAW PROHIBITS THE IMPLIED DUTIES THE COMMISSIONER URGES THIS COURT TO RECOGNIZE AS THE BASIS FOR PERSONAL JURISDICTION OVER THIRD NATIONAL BANK

The Commissioner also argues that even though Third National Bank was never notified of the cancellation by Durham of the policy covering Summit, it "should have known" of the cancellation because it had an implied duty to monitor the status of the insurance coverage. **Brief in Opposition at 22-24**. First, there is no legal basis for this argument because Louisiana law prohibits the imposition of implied fiduciary duties on financial institutions. *See* La. R.S. 6:1124 (1991). Second, the Trust Agreement states that Third National Bank shall have "no duty to determine whether the Administrator is properly performing its duties" under the Trust Agreement. **Petition at A-49**; **Brief in Opposition at 7a**. It was the duty of the Administrator to make all decisions "as to purchase, issuance, termination, modification or replacement of such group master policy or policies." *Id.* **at A-49**; **Brief in Opposition at 8a**. Third, such a duty would be inherently impossible to fulfill unless the Bank called the insurance company on at least a daily basis. Finally, since the Trust Agreement imposes no duty on the Bank in the event it learns that coverage has terminated, it would be entirely illogical to infer an implied duty to learn of insurance cancellation.

VII.

HANSON V. DENCKLA IS NOT DISTINGUISHABLE FROM THIS CASE

The Commissioner's attempts to distinguish *Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958), from this case are entirely unpersuasive. Third National Bank had no duty to maintain the group insurance policy obtained, nor to terminate the trust. Instead, as in *Hanson*, Third National Bank had a limited role which did not give rise to significant contacts with the forum state. Certainly, the *facts* in *Hanson* are different from those in the instant case. However, those factual distinctions make *Hanson* even more compelling in its application. Unlike *Hanson*, in which the trustee undertook the traditional trustee's role of administering monetary assets, Third National Bank had an even more limited role: safekeeping an insurance policy, and acting at the direction of the administrator to execute documents designed to maintain insurance coverage. Third National Bank in this instance was one step removed from the traditional trustee's discretionary role, and acted as a custodian with delineated duties. Thus, the fact that Group Programs deposited millions of dollars in bank accounts under the name of the trust, over which Third National Bank had no control, or that it continued to operate Summit after insurance coverage had been cancelled, does not constitute a permissible basis for the exercise of jurisdiction over Third National Bank in Louisiana. *St. Charles Land Trust v. St. Amant*, 253 La. 243, 217 So. 2d 385, 388-89 (1968); *Sternberger v. Glenn*, 175 Tenn. 644, 137 S.W.2d 269, 271 (1940) (in order for property to become trust property, legal title in the property must be

transferred to the trustee). *See also Hanson*, 357 U.S. at 253, 78 S. Ct. at 1239-40 ("the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the [minimum contacts] requirement" of the Due Process Clause).

It is irrelevant that Third National Bank corresponded with Group Programs in Louisiana and knew that Group Programs was operating primarily in Louisiana, just as it was irrelevant that the trustee in *Hanson* knew that the settlor and many beneficiaries were located in Florida and engaged in regular communications with the settlor in Florida for eight years. The question here is whether Third National Bank purposefully availed itself of the privilege of conducting jurisdictionally significant activities in Louisiana, thus invoking the benefit and protection of its laws. The answer to this question, as the Louisiana trial court correctly decided at the outset of the case, is no.

CONCLUSION

For the reasons set forth above and in its petition, Third National Bank respectfully submits that a writ of certiorari should be granted in this case.

Respectfully submitted,

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